

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
- - - - - X  
UNITED STATES OF AMERICA, : 10-CR-147 (DLI)  
:  
-against- : United States Courthouse  
: Brooklyn, New York  
MICHAEL PERSICO, : August 10, 2016  
: 10:00 a.m.  
Defendant :

TRANSCRIPT OF CRIMINAL CAUSE FOR FATICO HEARING  
BEFORE THE HONORABLE DORA L. IRIZARRY  
UNITED STATES DISTRICT JUDGE

## APP E A R A N C E S:

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1 (In open court; defendant present.)

2 COURTRoom DEPUTY: Criminal cause for Fatico  
3 hearing, Docket No. 10-CR-147, United States versus Persico.

4 Please state your appearances.

5 MR. LIFSHITZ: Alton Lifshitz for the United States.

6 And also at counsel table are FBI Special Agent Chance Adam,  
7 Probation Officer Mary Ann Betts, and a paralegal from our  
8 office Olivia Lemons. Good morning, Your Honor.

9 THE COURT: Good morning to all of you.

10 MR. FERNICH: Good morning, Your Honor, Marc  
11 Fernich.

12 Everybody will introduce themselves.

13 THE COURT: Of course. Good morning.

14 MR. SERCARZ: Good morning. For the defendant  
15 Michael Persico, Maurice Sercarz.

16 THE COURT: Good morning.

17 MS. KEDIA: Good morning, Your Honor. Sarita Kedia  
18 also for the defendant Michael Persico, who is seated to my  
19 right. And also at counsel table is Diane Fischer.

20 THE COURT: Good morning to all of you.

21 So, we are here for a Fatico hearing. I believe the  
22 Government is ready to proceed.

23 Just a couple of things that I wanted to put on the  
24 record before we get started. I just wanted to acknowledge  
25 receipt from Probation an addendum that was filed yesterday

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1 with respect to an outstanding issue of defendant's tax  
2 filings. I'm not sure that this means that the defendant did,  
3 in fact, provide the tax returns. I'm not clear on that.

4 PROBATION OFFICER: Yes, he did, Your Honor.

5 THE COURT: He did, okay. And apparently there's a  
6 statement as well from IRS that he is current in all of his  
7 tax filings, as I understand it.

8 There is the revised presentence report that was  
9 also disclosed on July 29th based on the Court's rulings on  
10 the objections that were discussed the last time that we were  
11 here in June, and I'm just going to ask that within 14 days -  
12 the deadline may be coming up - of its disclosure, if there  
13 are any additional objections to the presentence report,  
14 according to my standard requirements in criminal cases, if  
15 you would please indicate that, or indicate that you have no  
16 objections to the presentence report. I don't know if you've  
17 had a chance to review it before today. If you want to state  
18 on the record today whether or not you have any objections and  
19 then we could set a schedule accordingly if that's what you  
20 would like to do.

21 Any objections to the revised presentence report by  
22 the Government? Have you had time to review it sufficiently?

23 MR. LIFSHITZ: We have, Your Honor. We don't have  
24 objections.

25 THE COURT: Okay. Mr. Fernich?

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1                   MR. FERNICH: We haven't made a determination yet,  
2 Your Honor.

3                   THE COURT: I can't hear you. It may be that the  
4 mic is not on.

5                   MR. FERNICH: It's not on.

6                   Better?

7                   THE COURT: Yes, now I can hear you.

8                   MR. FERNICH: We haven't made a determination yet.  
9 There may be a few more written ones and we'll submit them in  
10 due course to the Court.

11                  THE COURT: All right. Well, do you want me to set  
12 a date for that to be done?

13                  MR. FERNICH: Sure.

14                  THE COURT: How much more time do you need for that?

15                  MR. FERNICH: A week.

16                  THE COURT: Okay. Just bear with me one second.

17                  So, shall we say August 17th?

18                  MR. FERNICH: That's fine, Judge.

19                  THE COURT: Okay. I don't necessarily require the  
20 objections to be posted on the docket, as long as Probation  
21 and the Government get a copy, and I just need to get a hard  
22 courtesy copy. One hard courtesy copy is fine.

23                  If there are objections raised by the defense, then  
24 I will need to get a response by the Government by September 1.

25                  MR. LIFSHITZ: Yes, Your Honor.

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1           THE COURT: It's not necessary if the defense says  
2 that there are no objections. Again, I only need one copy and  
3 as long as Probation is provided a copy, you can provide it by  
4 e-mail or hard copy, or however Probation would prefer you to  
5 do that.

6           Is there anything that the parties would like to  
7 address before we get started with the taking of evidence?

8           MR. LIFSHITZ: We just have one brief issue, Your  
9 Honor.

10          THE COURT: Yes, sir.

11          MR. LIFSHITZ: Last night, Ms. Kedia filed a notice  
12 of appearance in the case, the Court may have noticed. I  
13 don't know if the Court is aware, Ms. Kedia originally  
14 represented the defendant I believe beginning in 2010.

15          THE COURT: The name seemed familiar to me from the  
16 docket.

17          MR. LIFSHITZ: She was lead counsel.

18          THE COURT: She represented Mr. Michael Persico,  
19 correct, in the beginning of the case?

20          MR. LIFSHITZ: Correct, Your Honor. And she  
21 withdrew, I believe, in May 2014.

22          My understanding was that she withdrew because, at  
23 that time, the defense was making the breach motions that Your  
24 Honor's aware of that was decided by Judge Townes.

25          THE COURT: Yes.

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1                   MR. LIFSHITZ: Part of the defense theory was that  
2 the Government breached based on conversations Ms. Kedia  
3 participated in with government lawyers. Therefore, she could  
4 have been a witness if there had been a hearing, which the  
5 defense had requested at that time.

6                   The issue has been resolved by Judge Townes.

7                   THE COURT: Right.

8                   MR. LIFSHITZ: I do expect the defense will appeal  
9 on the issue and would request such a hearing if they succeed  
10 on the appeal, so Ms. Kedia could in the future be a witness  
11 in a hearing.

12                  This is a little different from the situation where  
13 a lawyer would have to testify at trial about the crimes that  
14 are charged, but it's still something I wanted to bring to the  
15 Court's attention in case the Court believes further inquiry  
16 is appropriate.

17                  THE COURT: Well, I made it clear back in June that  
18 we are not relitigating the motion to withdraw the guilty plea  
19 or any alleged breach of the plea agreement. That's been  
20 settled by the decisions of Judge Townes, and I made it clear  
21 that I was not going to revisit those issues.

22                  The issues here are fairly narrow. They relate to  
23 certain relevant conduct that's described in the presentence  
24 report, including certain additional alleged extortion  
25 activities, activities concerning some, I think, jukeboxes, if

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1 I'm correct, and also a homicide that the defendant is alleged  
2 to, by the Government, to have participated in.

3 So, I don't know that that necessarily impacts any  
4 of the issues concerning the withdrawal of the guilty plea or  
5 breach of the agreement.

6 MR. LIFSHITZ: I agree the issues in the Fatico are  
7 separate. I just didn't want to fail to advise the Court of  
8 that possibility.

9 THE COURT: I appreciate that.

10 Ms. Kedia, would you like to be heard on that  
11 question?

12 I ask lawyers, because I'm not sure if you appeared  
13 before me or not, to just sit and speak into the microphone,  
14 because otherwise it's a little difficult to hear. You should  
15 each have access to -- some are flat microphones and some are  
16 the high microphones. So whatever is convenient.

17 MS. KEDIA: Yes, Your Honor. Thank you. And I'll  
18 move that microphone over so that if I have to speak in the  
19 future, I won't have to switch chairs with Mr. Sercarz.

20 No, as I understand it, as the Court just stated,  
21 the Court has made clear that it does not want to revisit the  
22 breach issue or the plea withdrawal issue. That was the only  
23 issue with respect to which I potentially could have been a  
24 witness had there been a hearing. I don't believe that there  
25 are any additional issues that would concern the Court in any

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1 way in terms of my appearance at this Fatico hearing or at any  
2 future sentencing proceeding.

3 THE COURT: Okay. I'm not perceiving a problem  
4 here.

5 Mr. Persico, are you understanding the issues that  
6 we were discussing here?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: And are you okay with Ms. Kedia  
9 proceeding to represent you during the course of this hearing?

10 THE DEFENDANT: Yes, I am.

11 THE COURT: All right. So that should be fine.

12 Anything else that the parties would like to raise  
13 before we get started?

14 MR. LIFSHITZ: Not from the Government, thank you.

15 THE COURT: For the defense?

16 MR. FERNICH: No, ma'am.

17 THE COURT: All right. So why don't you call your  
18 first witness.

19 MR. LIFSHITZ: Yes, Your Honor. The Government  
20 calls Anthony Russo.

21 (Anthony Russo enters and takes the witness stand.)

22 THE COURT: Who's going to be cross-examining on  
23 behalf of the defense?

24 MR. SERCARZ: I am, Your Honor.

25 MS. KEDIA: Your Honor, Mr. Sercarz is going to be

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1 cross-examining this witness and I'm going to be  
2 cross-examining the next witness.

3 THE COURT: Perfect. Thank you.

4 COURTROOM DEPUTY: Please raise your right hand,  
5 sir.

6 ANTHONY RUSSO,

7 called by the Government, having been first duly  
8 sworn, was examined and testified as follows:

9 COURTROOM DEPUTY: Please be seated. Please spell  
10 your name.

11 THE WITNESS: Anthony Russo, R-U-S-S-O.

12 COURTROOM DEPUTY: Thank you.

13 THE COURT: And Anthony the usual spelling?

14 THE WITNESS: Yes.

15 THE COURT: Good morning, sir.

16 THE WITNESS: Good morning.

17 THE COURT: I'm just going to ask you to keep your  
18 voice up nice and loud and clear. Please speak slowly.

19 You can adjust the microphone so that you're  
20 comfortable with it. If you want to bring it down on to the  
21 table, that's fine. It's adjustable. You shouldn't have to  
22 be right on top of it.

23 I see you have water there, but we do have more  
24 water if you'd like. Just be careful with that pitcher. I  
25 tell everybody we don't want you wearing the water; we want

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1 you drinking it.

2 You may inquire when you're ready, Mr. Lifshitz.

3 MR. LIFSHITZ: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. LIFSHITZ:

6 Q Mr. Russo, have you committed crimes in your life?

7 A Yes.

8 Q What is the worst crime you have committed?

9 A Murder.

10 Q Who did you murder?

11 A Joey Scopo.

12 Q Did you murder Joey Scopo on your own or with others?

13 A With others.

14 Q How was Joe Scopo murdered?

15 A He was shot.

16 Q With what kind of guns?

17 A A MAC-10, machine gun, and a pistol.

18 Q How did you and your co-conspirators get those guns?

19 A We asked Michael -- we had a plan to get Joey Scopo and  
20 we asked Michael for -- that we needed guns for the hit.

21 Q Michael who?

22 A Persico.

23 Q Do you see Michael Persico here today?

24 A Yes, he's right there.

25 Q Can you please point him out and describe what he's

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1 wearing?

2 A He's wearing looks like a blue sport coat, gray hair.

3 MR. SERCARZ: I'll stipulate to the identification.

4 THE COURT: It's so noted, the witness has  
5 identified the defendant.

6 MR. LIFSHITZ: Thank you, Your Honor.

7 Q Mr. Russo, how old are you?

8 A 55.

9 Q Where did you grow up?

10 A In Brooklyn.

11 Q In what neighborhood or neighborhoods?

12 A I was born and raised -- born down in Court Street and  
13 moved to Borough Park.

14 Q How far did you go in school?

15 A Eleventh grade.

16 Q At what age did you begin committing crimes?

17 A Sixteen.

18 Q When you were a teenager, what types of crimes did you  
19 commit?

20 A I committed a lot of crimes: stealing trucks, robbing  
21 houses, selling drugs.

22 Q Did you possess guns in your teens?

23 A Yes, I did.

24 Q Did you ever fire a gun over someone's head?

25 A Yes, I did.

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1 Q In your teens and into your early 20s, did you have any  
2 legitimate jobs too?

3 A I had a couple.

4 Q What were your legitimate jobs?

5 A I had a trucking route. I worked -- I had a little -- my  
6 own truck and I used to deliver produce to Red Apple  
7 Supermarkets.

8 Q Did that job involve the Hunts Point Market?

9 A Yes, it did.

10 Q Did you also commit crimes at Hunts Point Market at that  
11 time?

12 A Yes.

13 Q What did you do?

14 A I was selling cocaine and stealing trucks.

15 Q In addition to operating a truck, did you have any other  
16 legitimate jobs in your teens and early 20s?

17 A Yeah, I drove an ambulette for an ambulance service.

18 Q Have you been involved in organized crime?

19 A Yes.

20 Q Approximately from when to when?

21 A Approximately from around the age of 15, 16.

22 Q Until what age?

23 A 'Til the day I was arrested in 2011.

24 Q With which crime families, if any, have you been  
25 associated?

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1 A Gambino and Colombo.

2 Q And what are the positions you have held in organized  
3 crime?

4 A Associate, soldier, and acting captain.

5 Q Based on --

6 THE COURT: And, I'm sorry, acting captain?

7 THE WITNESS: Yes.

8 Q Based on your experience, what is the purpose of  
9 organized crime?

10 A Organized crime, the basis for organized crime is to make  
11 money for the family.

12 Q How many crime families are there in New York City?

13 A There are five.

14 Q Please name them.

15 A Genovese, Gambino, Bonanno, Colombo, Lucchese.

16 Q Do these families have a common structure?

17 A Yes, they do.

18 Q If you could start at the top, what are the common  
19 positions in an organized crime family?

20 A The boss, underboss, consigliere, captains, soldiers,  
21 associates.

22 Q Are you familiar with the term "administration" in  
23 organized crime?

24 A Yes.

25 Q What's the administration?

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1 A Administration's the top three leaders: boss, underboss,  
2 consigliere.

3 Q Do you know what it means to be in an "acting" position  
4 in a crime family?

5 A Yes.

6 Q What does that mean?

7 A Acting, you're acting for the captain that's not around  
8 at the moment.

9 Q Why are captains sometimes not around?

10 A Usually they're in jail most of the times when you're  
11 acting for them.

12 Q Are you familiar with the term "official"?

13 A Yes.

14 Q What does that mean in organized crime?

15 A That's a permanent position.

16 Q You mentioned the term "associate."

17 What are the responsibilities of an associate in a  
18 crime family?

19 A Associates are people that hang around and want to be  
20 involved with people and they usually earn money for people  
21 they're around, like the soldiers.

22 Q So who does an associate report to?

23 A Soldier.

24 Q Are there different types of associates?

25 A Yeah. There's earners, there's tough guys, guys that,

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1 you know, break legs and stuff like that.

2 Q What type were you?

3 A I was a supposedly a tough guy.

4 Q What are the responsibilities of a soldier in a crime  
5 family?

6 A Soldiers, same thing almost as an associate, only you  
7 make money, do what he has to do to make money, follow it up  
8 to the top.

9 Q Is a soldier an inducted member of a crime family?

10 A Made member of the family, yes.

11 Q Is an associate an inducted member?

12 A No.

13 Q What about captain, what are a captain's responsibility?

14 A The captains run the crews and crews exist of soldiers  
15 and associates.

16 Q Who does a captain report to, if anyone?

17 A Basically the underboss.

18 Q What are the responsibilities of the underboss?

19 A He's in charge of all the captains and make sure  
20 everybody stays in line.

21 Q Does the underboss report to anyone?

22 A He usually reports to the boss, yes.

23 Q You mentioned a consigliere.

24 Is that a position?

25 A Yes.

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1 Q What is the responsibility of a consigliere?

2 A He's -- he's an advisor to the boss.

3 Q And what about the boss, what are the boss's  
4 responsibilities?

5 A The boss is the boss. He oversees the whole family.

6 Q How does money flow in an organized crime family?

7 A Up to the top.

8 Q Is there a process by which an associate can become an  
9 inducted member?

10 A Yeah, he has to -- he has to do what he has to do to  
11 become a made member. He's got to be around a soldier.

12 Soldier's got to put him up for induction into the family.

13 Q Is there a term for putting someone up for induction?

14 A Put him up for induction, put him in -- I don't know.  
15 Yeah, put him in for to become a wiseguy.

16 Q After someone's put up for induction, is there a next  
17 step in the process?

18 A Yes, there's a list that goes around to all the other  
19 five families.

20 Q What's the purpose of that list?

21 A That's so anybody in the other five families could check  
22 out who's going to be straightened out and if they have a  
23 problem, as long as it's not a personal problem, they can't  
24 really deny anybody, but if there is a problem, they -- they  
25 talk it out.

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1           THE COURT: What do you mean by "see who is going to  
2 be straightened out"?

3           THE WITNESS: Become a made member of the family.

4 Q       So the families can review each other's lists, is that  
5 what you're saying?

6 A       Yes.

7 Q       If someone makes it through the list part of the process,  
8 how does the associate become inducted?

9 A       There's a ceremony.

10 Q       What are some of the rules of organized crime families?

11 A       There's bunch of rules. One of the rules is that you  
12 can't raise your hands to another made member of any crime  
13 family. You're not supposed to be involved in any narcotics.  
14 You're really not supposed to murder unless if it's okayed by  
15 the boss. Cooperation with government or law enforcement is a  
16 definite no-no.

17 Q       At what age did you first become involved with organized  
18 crime?

19 A       Around 15, 16 years old.

20 Q       Which family did you become involved with then?

21 A       Gambino.

22 Q       How did you become involved with the Gambinos?

23 A       A soldier from the Gambino family took a liking to me,  
24 and I was working at my father's fruit store down on Court  
25 Street and he asked my father if I could hang around his club

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18

1 and I did.

2 Q At some time after you became involved with the Gambino  
3 family, were you arrested?

4 A Yes.

5 Q In approximately what year?

6 A Ninety -- '86, '87.

7 Q What were you arrested for?

8 A Gun possession and drugs.

9 Q How did you resolve your case?

10 A I pled out.

11 Q What was your sentence?

12 A Five years probation.

13 Q Your sentence was five years probation?

14 A Right.

15 Q Did you commit crimes while you were on probation?

16 A Yes.

17 Q What types of crimes?

18 A I was selling drugs again.

19 Q What drugs were you selling at that time?

20 A Cocaine.

21 Q In 1987 after the arrest you've just described, were you  
22 arrested again?

23 A Yes.

24 Q What had you done to get arrested?

25 A Assault.

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1 Q Describe what you did in the assault.

2 A I -- I beat a guy with a car jack.

3 Q Before you beat the guy with the car jack, did you beat  
4 up someone else connected --

5 A Yes, his son.

6 Q Why did you beat up his son?

7 A He owed me money for drugs.

8 Q And why did you beat up the father?

9 A Because he came looking for me.

10 Q How badly did you beat the son and father?

11 A The son, I broke his jaw and the father, I -- pretty  
12 badly. I broke his head open and broke his shoulder.

13 Q Did you go to trial?

14 A Yes.

15 Q What happened?

16 A I got convicted.

17 Q What was your sentence?

18 A Five-and-a-half to twelve, something like that.

19 Q Was this in the state system or the federal system?

20 A State.

21 Q Where were you imprisoned during that sentence?

22 A I was upstate in Coxsackie, maximum security, a  
23 mid-orange medium facility.

24 Q When you were in Coxsackie, was there anyone there that  
25 you knew?

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1 A Yes.

2 Q Who was that?

3 A "Teddy Boy."

4 Q What's his full name, his real name?

5 A Teddy Persico.

6 Q Is he a junior or a senior?

7 A He's a junior.

8 Q So Teddy Persico, Junior?

9 A Yes.

10 Q And you call him "Teddy Boy"?

11 A Yes.

12 MR. LIFSHITZ: Your Honor, may I show him exhibit  
13 156?

14 THE COURT: That's for identification?

15 MR. LIFSHITZ: Yes.

16 (The above-referred to exhibit was published.)

17 BY MR. LIFSHITZ:

18 Q Mr. Russo, do you recognize this person?

19 A Yes.

20 Q Who's that?

21 A Teddy.

22 Q Teddy Persico, Junior?

23 A Yes.

24 MR. LIFSHITZ: We would move to admit 156.

25 THE COURT: Any objection?

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1 MR. SERCARZ: No, Your Honor.

2 THE COURT: It's admitted.

3 MR. LIFSHITZ: Thank you.

4 (Government's Exhibit 156 was received in evidence.)

5 BY MR. LIFSHITZ:

6 Q When you were in prison with Teddy Persico, Junior, what  
7 role, if any, did he have in organized crime?

8 A He was a made member of the Colombo family.

9 Q Who was the boss of the Colombo family at that time?

10 A Carmine Persico.

11 Q Where was Carmine Persico?

12 A In jail.

13 Q What's the relationship, if any, between Carmine Persico  
14 and the defendant in this case, Michael Persico?

15 A Carmine's Michael's father.

16 Q Does Michael Persico have brothers that you know?

17 A Yes.

18 Q Who are they?

19 A Alphonse Persico, Lawrence Persico.

20 Q And what is the relationship between Michael Persico and  
21 the man in this exhibit, Teddy Persico, Junior?

22 A They're cousins.

23 Q When you were in prison with Teddy Persico, Junior, what  
24 sort of relationship did you have with him, if any?

25 A I was dear friends with Teddy.

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22

1 Q Did you two discuss your role in organized crime?

2 A Yes.

3 Q What, if anything, did he say about that?

4 A He said he wanted me around him.

5 Q What does it mean in organized crime to "be around  
6 someone"?

7 A It means you're on record with them and that you're  
8 protected by that family.

9 Q Do you have obligations to someone you're around?

10 A Sure, you do.

11 Q What?

12 A Whatever they need you to do, so be it beating somebody  
13 up, whatever.

14 Q Are there any obligations relating to money?

15 A I don't understand your question.

16 Q If you're around someone, do you have any obligations  
17 to --

18 A Sure, if you make money, you got to send it up.

19 Q After Teddy Persico, Junior said he wanted you around  
20 him, what effect, if any, did that have on your role in  
21 organized crime?

22 A What effect did it have on me?

23 Q Yes.

24 A When Teddy asked me to be around him?

25 Q Yes.

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23

1 A What kind of effect did it have on me? I don't  
2 understand.

3 Q Let me ask you this.

4 Before you went to -- started serving that prison  
5 sentence, what crime family were you associated with?

6 A Gambinos.

7 Q When you came out of Coxsackie, who were you associating  
8 with?

9 A I was associating with the Colombos.

10 Q And why was that?

11 A Because I was released and put with Teddy.

12 Q When were you released from state prison?

13 A I really don't know. All I know is Teddy told me his  
14 father would take care of it.

15 Q Do you remember around what year you were released?

16 A More than likely before I got home.

17 Q I'm sorry. When you say "released," what do you mean by  
18 "released"?

19 A Released from the Gambino crime family.

20 Q Okay. I think we had an ambiguity. I meant released  
21 from prison.

22 A Prison, okay.

23 Q When were you released from state prison?

24 A 1992, late '92.

25 Q And where was Teddy Persico, Junior when you were

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24

1 released?

2 A In jail.

3 Q So who, if anyone, did you report to in organized crime  
4 when you were released?

5 A Uncle Teddy.

6 Q Who is Uncle Teddy?

7 A Teddy's father.

8 Q What's his full name?

9 A Teddy Persico, Senior.

10 Q And just to be clear, what's the relationship between  
11 Teddy Persico, Senior and Carmine Persico, who you testified  
12 was the boss?

13 A They're the brothers.

14 THE COURT: You mentioned something about being  
15 released from the Gambinos. Can you explain what that means?

16 THE WITNESS: Being released meaning I was on record  
17 with them and Uncle Teddy straightened it out and brought me  
18 over to him. So they released me and brought me over and I  
19 was on record with the Colombos.

20 MR. LIFSHITZ: Your Honor, I'd like to show  
21 Government Exhibit 152B for identification.

22 (The above-referred to exhibit was published.)

23 Q Mr. Russo, do you recognize this person?

24 A Yes.

25 Q Who's that?

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25

1 A It's Alphonse Persico.

2 Q It's the Alphonse Persico that you testified is Michael  
3 Persico's brother?

4 A Yes.

5 MR. LIFSHITZ: I'd move to admit 152B, Your Honor.

6 THE COURT: Any objection?

7 MR. SERCARZ: No, Your Honor.

8 THE COURT: It's admitted.

9 (Government's Exhibit 152B was received in  
10 evidence.)

11 BY MR. LIFSHITZ:

12 Q While you've been involved with the Colombo family, what  
13 position, if any, did Alphonse Persico hold with the family?

14 A He was a made member and he was a captain, and when he  
15 came home, when I was around, he was a acting boss.

16 MR. LIFSHITZ: I'd like to show Government  
17 Exhibit 155 for identification.

18 (The above-referred to exhibit was published.)

19 BY MR. LIFSHITZ:

20 Q Do you recognize that person?

21 A Yes.

22 Q Who is that?

23 A It's Michael.

24 Q Michael Persico?

25 A Yes.

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26

1 MR. LIFSHITZ: I'd move to admit 155, Your Honor.

2 THE COURT: Any objection?

3 MR. SERCARZ: No, Your Honor.

4 THE COURT: It's admitted.

5 (Government's Exhibit 155 was received in evidence.)

6 MR. LIFSHITZ: And finally for now, I'd like to show  
7 Government Exhibit 167 for identification.

8 (The above-referred to exhibit was published.)

9 BY MR. LIFSHITZ:

10 Q Who's this?

11 A It's me.

12 MR. LIFSHITZ: I move to admit 167.

13 THE COURT: Any objection?

14 MR. SERCARZ: No, Your Honor.

15 THE COURT: Thank you.

16 (Government's Exhibit 167 was received in evidence.)

17 BY MR. LIFSHITZ:

18 Q Going back to Teddy Persico, Senior.

19 What positions did he hold in the crime family while  
20 you were involved with it?

21 A Teddy Senior?

22 Q Teddy Senior.

23 A When I came home, he was captain.

24 Q Did you meet him in person when you were released in  
25 1992?

*Russo - Direct / Lifshitz*

27

1 A Yes, I met him the same day I came home from prison.

2 Q At what location?

3 A On 11th Avenue in Brooklyn.

4 Q What was at 11th Avenue?

5 A It was Romantique was down there.

6 Q What is Romantique?

7 A It's a limousine company.

8 Q Who owned it?

9 A Michael.

10 Q Michael who?

11 A Persico.

12 Q I think you said it was on 11th Avenue; is that right?

13 A Yeah, 11th Avenue, 67th Street.

14 THE COURT: In what borough?

15 THE WITNESS: In Brooklyn.

16 Q Do you recall any other locations Romantique had over the  
17 years?

18 A Yes, 86th Street off 14th Avenue. There's another place  
19 in Staten Island on Hyland Boulevard.

20 Q When you mentioned 86th Street, is that in Brooklyn too?

21 A Yes.

22 Q When you met Teddy Persico, Senior at Romantique the day  
23 you were released, what, if anything, did he say to you?

24 A He told me to, "Be careful, stay out of trouble, and if  
25 you have any problems, come see me."

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1 Q What did you understand that to mean?

2 A If I had any problems, to come see him and he would  
3 handle it.

4 Q Were you around him at that point?

5 A Yes.

6 Q Who else was around him at that time, 1992?

7 A Mostly all "Teddy Boy's" guys: me, BF, Bobby Tarantola,  
8 Anthony Ferrara, Frankie Sparaco.

9 Q You mentioned a BF.

10 Is that a nickname?

11 A Yes.

12 Q What's BF's real name?

13 A Frank Guerra.

14 MR. LIFSHITZ: I show the witness Government  
15 Exhibit 130A for identification.

16 (The above-referred to exhibit was published.)

17 BY MR. LIFSHITZ:

18 Q Who's depicted in 130A?

19 A Frankie.

20 Q Frankie who?

21 A Guerra.

22 MR. LIFSHITZ: I move to admit 130A, Your Honor.

23 THE COURT: Any objection?

24 MR. SERCARZ: No, Your Honor.

25 THE COURT: It's admitted.

*Russo - Direct / Lifshitz*

29

1                   (Government's Exhibit 130A was received in  
2 evidence.)

3 BY MR. LIFSHITZ:

4 Q Around when did you meet Guerra?

5 A Excuse me?

6 Q Around when did you first meet Guerra?

7 A Around '82, '83.

8 Q 1982 or '83?

9 A Yes.

10 Q Did you two develop a relationship?

11 A Yes.

12 Q How close were you?

13 A Very close.

14 Q Until when?

15 A Until the day I was arrested in 2011.

16 Q When you were released from state custody in 1992, were  
17 you subject to any rules or court supervision?

18 A Yes.

19 Q What do you recall being subject to?

20 A I was subject to staying out of trouble and not  
21 associating with felons, known felons, and I have to go to  
22 work and stay clean of everything.

23 Q Did you live at home at that time?

24 A I lived with my parents for a couple months, yes.

25 Q When you were first released?

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1 A Yes.

2 Q Did you break any of the rules you just mentioned?

3 A Yeah. Yes.

4 Q You said one of the rules was to have a job.

5           Did you get a job?

6 A Yes.

7 Q Did you actually go to the job?

8 A No.

9 Q Were you ever in a halfway house?

10 A Yes, I was.

11 Q When you were released from prison in 1992 and you began  
12 reporting to Teddy Persico, Senior, what was happening in the  
13 Colombo family?

14 A There was a family feud going on. It was an internal  
15 war.

16 Q What were the sides in that war?

17 A There was the Persico faction against the Orena faction.

18 Q Orena, who's that named after?

19 A Vic Orena. He was the acting boss at the time.

20 Q The acting boss of the Colombo family?

21 A Yes.

22 Q And just to be clear, who was the Persico faction named  
23 after?

24 A Carmine Persico.

25 Q Who were some of the leaders on the street in the Persico

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1 faction?

2 A Who was in the street at the time, Chucky Russo, JoJo  
3 Russo, Uncle Teddy, Joe Monte, Tommy Gioeli.

4 Q Were the two Russos you just mentioned related to you?

5 A No, not at all.

6 Q And when you mentioned Uncle Teddy, is that Teddy  
7 Persico, Senior?

8 A Yes.

9 Q And what about the other side, the Orena faction, who  
10 were some of the leaders on that side?

11 A You had Joey Scopo, you had "Wild Bill" Cuotolo.

12 Q What was at stake in this war?

13 A The family, taking over the family.

14 Q Who was trying to take over the family?

15 A Vic Orena.

16 Q Moving ahead to 1993.

17 What, if anything, happened to Teddy Persico,  
18 Senior?

19 A He was arrested.

20 Q And around the time of his arrest, who else, if anyone,  
21 do you recall being arrested from the Colombo family?

22 A A few people were arrested: Frankie Sparaco, Chucky, JoJo  
23 Russo, Joe Monte.

24 Q By the way, you've mentioned Joe Monte a couple of times.

25 Was there one Joe Monte or more than one?

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1 A Well, he had a son.

2 Q And the one you've testified about was which one, the  
3 father or the son?

4 A The father.

5 Q So, after Teddy Persico, Senior was arrested in 1993,  
6 who, if anyone, did you and Frank Guerra report to?

7 A Well, we were hanging out with Michael.

8 Q Michael who?

9 A Persico.

10 Q Now, what was Michael Persico's position in the crime  
11 family?

12 A He didn't have one. He was an associate.

13 Q Is it common in organized crime for an associate to  
14 report to another associate?

15 A Not really, no.

16 Q So why did you report to an associate?

17 A Because we were really close with Michael and his  
18 father's the boss and we didn't trust anybody else.

19 MR. SERCARZ: Your Honor, I'll move to strike the  
20 witness's opinion, no basis for it.

21 MR. LIFSHITZ: His opinion of why he did something.

22 THE COURT: Can I hear the last two questions and  
23 answers, please?

24 (The requested portion of the record was read back  
25 by the Official Court Reporter.)

1           THE COURT: Overruled.

2 BY MR. LIFSHITZ:

3 Q       When you reported to Michael Persico, where, if anywhere,  
4 would you meet with him?

5 A       Excuse me?

6 Q       When you reported to Michael Persico in or around 1993,  
7 where did you meet him, if anywhere?

8 A       Wherever -- wherever he was, Romantique, 11th Avenue, the  
9 bus company he had in Coney Island, restaurants, wherever.

10 Q       What crimes, if any, did you discuss with him?

11 A       I used to take money from him and shylock it.

12 Q       What's shylock?

13 A       Shylock is lending money to people for a percentage to  
14 owe every week.

15 Q       Is that loansharking?

16 A       Yes.

17 Q       Okay. We'll return to that topic later.

18           At that time in 1993, did you observe whether anyone  
19 else you knew to be in the Colombo family met with Michael  
20 Persico?

21 A       Michael met with a few people, yeah.

22 Q       Who did you see meeting with him?

23 A       I seen him meet with Joe Bonanza, met with all of us all  
24 the time.

25 Q       When you say "all of us," who do you mean?

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1 A Meaning Teddy's guys, me, BF, Bobby Tarantola, Little  
2 Anthony used to show up.

3 Q What were the positions of those people?

4 A All associates.

5 Q Did you become involved in the Colombo family war?

6 A Yes, I did.

7 Q On what side?

8 A The Persico.

9 Q And in what year did you become involved?

10 A The minute I got home in 1992.

11 Q After you became involved on the Persico side, did you  
12 ever plan to commit a murder?

13 A Yes.

14 Q Who did you first plan to murder?

15 A "Wild Bill" Cuotolo.

16 Q "Wild Bill" Cuotolo?

17 A Yeah.

18 Q What was his position in the crime family?

19 A He was like a captain in the family, I guess.

20 Q On which side of the war?

21 A On the Orena side.

22 Q Who, if anyone, were you planning with to kill "Wild  
23 Bill" Cuotolo?

24 A Me, BF, Bobby Tarantola, Danny Persico, Little Anthony  
25 Ferrara, Eric Curcio.

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1 Q You mentioned a Danny Persico.

2 Who's is that?

3 A That's Michael's cousin. That's "Teddy Boy's" brother.

4 Q Teddy Persico, Junior's brother?

5 A Yes.

6 Q With who, if anyone, did you discuss the plan to murder  
7 "Wild Bill" Cuotolo?

8 A Well, we told Michael about it.

9 Q Who told Michael about it?

10 A Me, BF.

11 Q When you say "Michael," which Michael do you mean?

12 A Michael Persico.

13 Q What do you recall saying to him in substance?

14 A Told him that we almost had him a couple of times. We  
15 would tell him what we were doing.

16 Q What does that mean, you almost had him certain times?

17 A We almost killed him a couple times.

18 Q Killed who?

19 A "Wild Bill."

20 Q After you planned to murder "Wild Bill," who, if anyone,  
21 did you next intend to murder?

22 A Joey Scopo.

23 Q And what was Joey Scopo's role in the crime family?

24 A He was like number 2 on the Vic Orena side.

25 Q Who, if anyone, got you involved in planning to murder

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1 Joe Scopo?

2 A Well, it all started when Michael asked me to go down and  
3 see Eric. He said he had a line on Joey.

4 Q You mentioned Michael.

5 Who is that?

6 A Michael Persico.

7 Q And you said he told you to see Eric.

8 Who is Eric?

9 A He told me and BF, "You have to go down and see Eric  
10 Curcio."

11 Q And you said Eric had a line on Joey; is that right?

12 A Yes.

13 Q What did you understand that to mean?

14 A It's meant that he knew where he was and --

15 MR. SERCARZ: Objection.

16 THE COURT: Overruled. He's asking what the witness  
17 understood him to mean by that. Overruled.

18 Q Sorry, you can answer the question.

19 A Can you repeat it?

20 Q What did you understand Michael Persico meant when he  
21 said that Eric Curcio had a line on Joe Scopo?

22 A That -- that I understood it was to go see Eric and he  
23 knew where Joey was and we could do what we had to do and kill  
24 him.

25 MR. LIFSHITZ: I'd like to show what's marked as

1 Government Exhibit 112B for identification.

2 (The above-referred to exhibit was published.)

3 BY MR. LIFSHITZ:

4 Q Do you recognize this person?

5 A Yeah, that's Eric.

6 Q Eric who?

7 A Curcio.

8 MR. LIFSHITZ: We would move to admit 112B.

9 THE COURT: Any objection?

10 MR. FERNICH: None, Your Honor.

11 THE COURT: Thank you. It's admitted.

12 (Government's Exhibit 112B was received in  
13 evidence.)

14 BY MR. LIFSHITZ:

15 Q Can you tell us or remind us what was Eric Curcio's  
16 position in the Colombo family?

17 A He was an associate.

18 Q Who, if anyone, did he say he was related to?

19 A He said he was related to Joe Monte, Senior.

20 Q And what was Joe Monte's position?

21 A He was a made member of the Colombo crime family.

22 Q When Michael Persico told you to see Eric Curcio about  
23 Joe Scopo, were you interested in killing Scopo?

24 A Yes.

25 Q Why were you interested in that?

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1 A To further advance in the family and to help my friend  
2 Teddy out.

3 Q How would it help Teddy?

4 A Because getting rid of Joey, the war would end and the  
5 Persicos would hold on to control of the family.

6 Q So, did you go see Eric Curcio?

7 A Yes, I did.

8 Q And what, if anything, did he say to you?

9 A He told me and BF that he knew exactly where Joey was and  
10 if we were willing to kill Joey and to put a crew together.

11 Q What did you say?

12 A We said yes.

13 Q Who else, if anyone, became part of this crew? Who next  
14 became part of this crew?

15 A Well, we put it together, me, BF, Robert Tarantola, Eric  
16 Curcio, Little Anthony Ferrara.

17 Q Was that the original?

18 A That was the original, yeah.

19 Q Who became involved next, if anyone?

20 A Then a little bit down the road, Johnny Sparacino got  
21 involved. Eric brought him into it.

22 MR. LIFSHITZ: I show Government Exhibit 176 for  
23 identification.

24 (The above-referred to exhibit was published.)

25 ///

1 BY MR. LIFSHITZ:

2 Q Do you recognize the person in 176?

3 A Yeah, that's Johnny Sparacino.

4 Q You may have just said this, but who brought him into the  
5 plan?

6 A Eric Curcio.

7 Q After you and Guerra met with Michael -- sorry, after you  
8 and Guerra met with Curcio to initially discuss killing Scopo,  
9 did you ever discuss that again with --

10 THE COURT: I'm sorry, did you move Government  
11 Exhibit 176 into evidence?

12 MR. LIFSHITZ: I may have neglected to, Your Honor.  
13 I'm sorry.

14 Move to admit 176.

15 THE COURT: Any objection?

16 MR. SERCARZ: No, Your Honor.

17 MR. LIFSHITZ: Thank you.

18 THE COURT: It's admitted.

19 (Government's Exhibit 176 was received in evidence.)

20 BY MR. LIFSHITZ:

21 Q After you initially discussed Joe Scopo with Eric Curcio,  
22 did you say anything about that to Michael Persico?

23 A Yes.

24 MR. SERCARZ: Your Honor, I'm going to object to the  
25 leading.

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1           THE COURT: Well, I'm going to overrule. Just be  
2 careful with the wording.

3           MR. LIFSHITZ: Understood, Your Honor.

4 Q       Did you understand the question?

5 A       I didn't even hear it.

6 Q       After you met with Eric Curcio about Joe Scopo, did you  
7 discuss that with Michael Persico?

8 A       Yes, I did.

9 Q       Who were you with, if anyone?

10 A      BF.

11 Q       What, if anything, did you and BF say?

12 A       We told him what our plans were and he said okay, and I  
13 told him that we needed weapons and he said, "No problem, we  
14 have plenty," and he pointed to Smiley and he told BF, "You  
15 got Smiley's number. Smiley will bring you a bag."

16 Q       Who was Smiley?

17 A       Smiley's an associate of the family.

18 Q       Of the Colombo family?

19 A       Yes.

20 Q       Did you and BF obtain guns after that?

21 A       Yes, we did.

22 Q       Who showed you the guns?

23 A       BF brought them to my house.

24 Q       How long after this meeting with Michael Persico did BF  
25 show you the guns?

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1 A The same day.

2 Q How were the guns packaged, if at all?

3 A The big gym bag, duffel bag, big black bag.

4 Q Do you remember what kinds of guns were in there?

5 A The MAC-10 was in there with the silencer. There was a  
6 couple of broken down silencers in there with a couple of  
7 pistols.

8 Q A MAC-10 with a silencer, you said?

9 A Yes.

10 Q And a pistol?

11 A Couple pistols, yes.

12 Q What, if anything, did BF tell you about how he obtained  
13 those guns?

14 A Excuse me? I didn't hear you.

15 Q What, if anything, did BF say to you about how he got  
16 those guns?

17 A He just brought them over, and I told him, "Where did you  
18 get them?" He said, "I just picked them up from Smiley."

19 Q During the planning of the Scopo murder, where was Teddy  
20 Persico, Junior?

21 A In prison.

22 Q Did anyone close to you visit him?

23 A Yes, BF visited him a lot.

24 Q What, if anything, did BF tell you about that?

25 A He told me that he laid it all out to Teddy, told him all

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1 we had planned on doing.

2 Q And what, if anything, did BF report Teddy said?

3 A Teddy said to make sure --

4 MR. SERCARZ: Objection, Your Honor. There are  
5 multiple levels of hearsay.

6 MR. LIFSHITZ: Your Honor, these are --

7 THE COURT: Go ahead, you can argue. We don't have  
8 a jury here.

9 MR. LIFSHITZ: These are members and associates of a  
10 crime family planning a murder. They're clearly  
11 co-conspirator statements made in furtherance of a conspiracy.

12 THE COURT: Overruled. This is a hearing. There's  
13 some relaxation of the rules.

14 BY MR. LIFSHITZ:

15 Q I'll try to repeat the question, Mr. Russo.

16 What, if anything, did BF tell you Teddy Persico  
17 said in those meetings?

18 A He told me that he told Teddy about everything we were  
19 planning on doing and he said to "make sure yous get it done."

20 Q Who said "make sure yous get it done"?

21 A Teddy.

22 Q What, if any, concerns did Teddy Persico express to BF?

23 A Well, one concern was about me.

24 Q What was that?

25 A That he wanted to make sure that I was capable.

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1 Q Capable of what?

2 A Handling this, you know, getting involved with the  
3 murder.

4 Q Did you say anything to BF about that?

5 A Yeah, I said a couple things.

6 Q What did you say?

7 A One of them is I told him that, "Don't worry about me. I  
8 did something long ago with Munchie."

9 Q What were you trying to convey when you said that?

10 A Well, he knew what I meant. He meant I was conveying  
11 that I committed a murder with Munchie.

12 Q Was that true?

13 A No.

14 Q Why did you say it?

15 A So everybody would be calm and relaxed and understand  
16 that I could take care of it. Just to reassure everybody.

17 Q After you saw the bag containing the MAC-10 and the  
18 pistol you testified about, what person or people did you look  
19 to kill?

20 A Excuse me? Say that again.

21 Q After BF showed you the guns in the bag.

22 A Right.

23 Q Who did you look to kill? What person or persons did you  
24 look to kill?

25 A Well, we were going after Billy, but, I mean, yeah,

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1 Billy, and we just stopped and we started focusing on Joey a  
2 lot.

3 Q And when you say "Billy," who is that?

4 A "Wild Bill" Cuotolo.

5 Q And "Joey" refers to?

6 A Joey Scopo.

7 Q Did you or anyone you were making these plans with ever  
8 actually kill "Wild Bill" Cuotolo?

9 A No.

10 Q Did you come close?

11 A Yes.

12 Q What happened?

13 A One night we were just driving around, me, Johnny Pappa  
14 and BF, and we just happened to get lucky going down his block  
15 where he lived and we caught Billy coming out of a car right  
16 in front of his house, but he was reaching for the back door  
17 on the passenger side and when he opened the door, we were a  
18 few cars behind, an older woman just got out of the backseat.  
19 So I pulled John Pappa back in the car, told him forget it.

20 Q Why did you tell him to forget it?

21 A 'Cause I didn't want any innocent people getting hurt.

22 Q At some point during the planning of the Scopo murder,  
23 did you meet with Teddy Persico, Junior in person?

24 A Excuse me?

25 Q At some point during the planning of the Scopo murder,

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1 did you meet with Teddy Persico, Junior?

2 A Yes, yes.

3 Q Approximately when did you meet him?

4 A I'm going to say the summertime. His grandmother passed  
5 away, I think it was '94. I'm not hundred percent sure.

6 Q What time of year was it?

7 A It was -- it was warm out. It was the summertime some  
8 time.

9 Q And to be clear, was it before or after the Joe Scopo  
10 murder?

11 A It was before the Scopo murder.

12 Q What was the location where you met?

13 A The funeral parlor, Scarpaci's Funeral Parlor.

14 Q Where is that?

15 A 14th Avenue and 86th Street.

16 Q In Brooklyn?

17 A Yes.

18 Q If he was in jail, what's your understanding of why he  
19 was able to be there?

20 A Well, I was in state prison too and when you lose a  
21 family member and it's immediate family, they usually bring  
22 you down for so you could view the body for a couple hours and  
23 they bring you back.

24 Q What happened when you saw Teddy Persico, Junior at the  
25 Scarpaci Funeral Home?

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1 A Well, when he got there, we were there, me, Bobby and BF,  
2 and he went up to the casket. He said a prayer to his  
3 grandmother, and he came back. As he was walking back, he  
4 wanted to speak to me and Bobby and BF.

5 Q Bobby who?

6 A Tarantola.

7 Q And what, if anything, did Teddy say to the three of you?

8 A We were explaining to him what we were doing again and he  
9 was asking us how things were going and he said, "You got to  
10 get it done and I want my guys to do it."

11 Q When he said "you got to get it done," what did you  
12 understand that to refer to?

13 A Make sure we kill him.

14 Q Kill who?

15 A Joey Scopo.

16 Q And when he said he wanted his guys to get it done, what  
17 did you understand that to mean?

18 A He wanted us to get it done, me, Bobby and BF.

19 Q Did you agree to do that?

20 A Yes.

21 Q After that, did you look for Joe Scopo?

22 A Yes.

23 Q Who was involved in the crew to kill Joe Scopo by this  
24 point?

25 A The day Joey got killed, it was me, BF, Eric Curcio,

1 Johnny Pappa, and John Sparacino.

2 MR. LIFSHITZ: I show Government Exhibit 151 for  
3 identification.

4 (The above-referred to exhibit was published.)

5 A That's Johnny Pappa.

6 Q 151 is Johnny Pappa?

7 A Yes.

8 MR. LIFSHITZ: I'd move to admit 151, Your Honor.

9 THE COURT: Any objection?

10 MR. SERCARZ: No, Your Honor.

11 THE COURT: Admitted.

12 (Government's Exhibit 151 was received in evidence.)

13 BY MR. LIFSHITZ:

14 Q How did Pappa become involved in the planning?

15 THE COURT: I'm sorry, can you spell the name?

16 MR. LIFSHITZ: John, the usual way, and Pappa,  
17 P-A-P-P-A.

18 THE COURT: Thank you.

19 Q How did John Pappa become involved in the planning?

20 A Eric Curcio brought him around.

21 Q After the funeral you testified about, did you and the  
22 crew ever come close to murdering Scopo without actually  
23 killing him?

24 A Yes, one time, yeah.

25 Q Tell us what happened.

1 A We were setting up near his house I think in Canarsie and  
2 we were just -- there was two crash cars, and me and BF and  
3 Johnny Pappa were in -- we were going to be the shooters at  
4 that time, and we were going around the block looking for a  
5 spot to park and we came around the block and there was  
6 somebody, like, basically his whole body was in the garbage  
7 can, like he was looking in the garbage can, and we didn't  
8 know who it was, so we were still looking for the spot. When  
9 we came back around, Joey was walking up the stairs to his  
10 house and we realized it was him, and it was a big joke. We  
11 just called it off 'cause he was too close to his front door.

12 Q The Joey you mentioned was Joe Scopo?

13 A Joe Scopo, yes.

14 Q And I believe you used the phrase "crash car"; is that  
15 right?

16 A Crash cars, yeah.

17 Q What is a crash car?

18 A We use them to -- on the hit because you need cars behind  
19 you to block in case anybody tries to get involved to be sure  
20 the shooters can get away.

21 Q They block off the street?

22 A They block off the street. They block off any law  
23 enforcement tries to get -- intervene.

24 Q After this incident where you saw Joe Scopo but didn't  
25 kill him, did you discuss it with anyone?

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1 A Yeah. Yeah.

2 Q With who?

3 A We discussed it with a few people. We told Michael about  
4 it too.

5 Q Michael who?

6 A Persico.

7 Q What did you say to him, if anything?

8 A Well, we made it like a joke, that we almost had him and  
9 he was in the garbage can and when we came around the block  
10 again, he was walking up the stairs and we didn't know it was  
11 him.

12 Q What, if anything, did Michael Persico say back?

13 A He said, "You got to get this thing done before my  
14 brother goes to trial."

15 Q Did he have a brother who was close to going to trial?

16 A Yeah, "Allie Boy."

17 Q Alphonse Persico?

18 A Yes.

19 Q Where was Alphonse Persico at that time?

20 A In jail.

21 Q And what was your understanding of why it was important  
22 to kill Scopo before Alphonse Persico went to trial?

23 MR. SERCARZ: Objection.

24 THE COURT: It's his understanding of why it was  
25 important. Overruled.

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1            You may answer the question.

2 A        My understanding was it was supposed to be done before is  
3 because at least he would have an alibi. He's in jail, he had  
4 nothing to do with it.

5 Q        Alphonse --

6 A        That's my understanding of it, yeah. Alphonse Persico.

7 Q        Alphonse would have the alibi; is that right?

8 A        Yes, and to get it done and once that was done, the  
9 family would come back in order.

10 Q       After that conversation, did you continue to look for  
11 Scopo?

12 A       Yes.

13 Q       Did you have any trouble finding him?

14 A       Yeah, we had some problems.

15 Q       What was the problem?

16 A       He moved. He moved to another area. We didn't know  
17 where he was.

18 Q       Did you ever look for him anywhere other than near his  
19 home?

20 A       Yes, we went near his club. He had a club, social club  
21 on 101st Avenue in Ozone Park.

22 Q       What is a social club?

23 A       It's where guys hang out and just meet, play cards.

24 Q       What kind of guys?

25 A       Guys like me, you know, members of the Mafia.

Russo - Direct / Lifshitz

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1 Q What happened when you looked for him outside a social  
2 club?

3 A Well, we went to the club one night and he was -- we  
4 couldn't see, we couldn't find him, so we went by the club to  
5 see if we found him. So, I know he didn't know me, so I got  
6 out of the van and I took a walk past his club, I didn't see  
7 him. So I went around the block and I was -- had a radio on  
8 me and a pistol, and as I was going around the block just to  
9 take a walk, I was going to smoke a cigarette and I -- the  
10 radio cracked through and said it was Frankie on the radio  
11 telling me, "He's right behind you."

12 Q Frankie who?

13 A BF.

14 Q Okay, go on.

15 A And I was standing in front of somebody's -- in front of  
16 their house and when I turned around, he was right behind me.

17 Q Who was right behind you?

18 A Joey and a friend of his Sal.

19 Q Joe and Sal?

20 A Joe and Sal.

21 Q What happened next?

22 A I was ready to -- I was pulling out my pistol, but at the  
23 same time I was grabbing my gun, the lady came out of the  
24 front of the house like two feet from me with two little --  
25 two kids, and at the same time, Joey was walking right by me.

*Russo - Direct / Lifshitz*

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1 So I just turned and walked away.

2 Q Did you and your crew eventually succeed in murdering Joe  
3 Scopo?

4 A Yes, we did.

5 Q Around when did you murder Joe Scopo?

6 A Late '93.

7 Q Where?

8 A Ozone Park. I don't remember the exact street. It was  
9 between 109th Avenue and I think 111th Street, I'm not sure,  
10 110th Street.

11 Q Repeat what you just said?

12 A I said like 110th Street, 109th Avenue in Ozone Park,  
13 Queens in front of his house.

14 Q How did you locate him?

15 A Eric. Eric found out where he was.

16 Q Eric Curcio?

17 A Yes.

18 Q So, when Joe Scopo was actually murdered, who was present  
19 on that scene?

20 A Me, Johnny Pappa, John Sparacino, Frankie Guerra, BF, and  
21 Eric Curcio.

22 Q Was there a plan?

23 A Yeah.

24 Q What was each person's role in the plan?

25 A Eric was a crash car, BF was a crash car, I was a driver

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1 of the getaway car, and John Sparacino was in the backseat, he  
2 was the shooter, he had the MAC-10, and John was there, Pappa  
3 was for backup just in case.

4 Q So how many cars were there in total?

5 A Three.

6 Q You were driving one of them?

7 A I was driving the one, yes.

8 Q Just to be clear, who, if anyone, was in your car?

9 A John Sparacino and Johnny Pappa.

10 Q And BF and Curcio?

11 A BF was behind me in his car and Eric was on the corner  
12 blocking the street off.

13 Q In a separate car?

14 A In a separate car, yes.

15 Q I think we were saying that was the plan.

16 Did you, in fact, drive Sparacino and Pappa during  
17 the murder?

18 A Yes.

19 Q In what kind of car?

20 A It was a stolen car I think it was -- I don't remember  
21 the exact make. It might have been a Chevy, brown.

22 Q What do you remember about what it looked like?

23 A Excuse me?

24 Q What, if anything, do you recall about what it looked  
25 like?

Russo - Direct / Lifshitz

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1 A It was a four-door I think brown or beige car.

2 Q You said it was a stolen car?

3 A Yes.

4 Q How did you start the car?

5 A With a screwdriver.

6 Q Did you have any way to communicate among the three cars?

7 A Yes, we had radios, walkie-talkies.

8 Q Please walk us through what happened on the night of the  
9 murder.

10 A On the night of the murder, we got to his house. We used  
11 to set up on the corner of his house if we went by there. So  
12 when set up on the corner, the night of the murder, when we  
13 got there, we were just pulling up and setting up where we  
14 went and park, and not even two minutes there we -- he turned  
15 the corner and Eric turned around and said there he is. So  
16 everybody jumped in their cars and I told them exactly what I  
17 was going to do. I told Johnny Sparacino, "I'm going to pull  
18 up to the front of his car and just kick your door open and,  
19 you know, empty that gun in there, into the car."

20 Q Did you see how Scopo was arriving?

21 A Yes, he -- he -- what do you mean how he was arriving?

22 He was arriving in a car.

23 Q What kind of car, if you recall?

24 A It was a light color, small, I think it was an Altima,  
25 Nissan. I think it was a Nissan.

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1 Q What were you wearing on your head that night?

2 A I was wearing a hat.

3 Q What kind of hat?

4 A Pink cap.

5 Q Was Sparacino wearing anything unusual?

6 A He was wearing a ski mask, yeah.

7 Q So, after you told Sparacino what to do, what happened  
8 next?

9 A We drove -- we waited for him to see if he was going to  
10 park and we caught his reverse lights going on and, you know,  
11 he was parking, backing up to park.

12 Q Who was parking?

13 A I wasn't -- Joey was on the passenger side of the front  
14 seat and I don't know who the kid was in the front seat  
15 driving, but he was parking and I told him, "I'm going to pull  
16 up. As soon as he backs in, I'm going to put the back end of  
17 your door against his bumper, front bumper, so you can swing  
18 your door open and just do what you have to do."

19 Q Did you do those things?

20 A Yes, I did.

21 Q And what did Sparacino do?

22 A He did exactly what he was supposed to do.

23 Q What did he do?

24 A He emptied the machine gun into Joey's car.

25 Q Was his door closed?

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1 A No, it was wide open. He opened the door, stood in the  
2 back of the car and just emptied the gun into the window.

3 Q Which gun was that?

4 A The MAC-10.

5 Q What, if anything, did Pappa do?

6 A While he was shooting, while Johnny Sparacino was  
7 shooting in the car, a bullet came through the back window of  
8 the car I was driving and blew out my driver's window, and at  
9 the same time I went down, Johnny Pappa jumped out of the car  
10 and he left the door open so I could see what he was doing.  
11 He ran to -- into the bushes over there and he was, like,  
12 lurking around see what was going on.

13 Q What did he have with him?

14 A He had a pistol on him. I don't remember exact kind of  
15 pistol, but I know it was an automatic.

16 Q What did he do with it?

17 A Well, at the same time, Johnny Sparacino, after the  
18 bullet blew out the window, he was screaming, "Go, go, go,  
19 go." So I started taking off and I could see Johnny starting  
20 to shoot.

21 Q Johnny who?

22 A Johnny Pappa.

23 Q So you took off with who in your car?

24 A Just me and John Sparacino.

25 Q And Pappa was left on the street?

*Russo - Direct / Lifshitz*

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1 A He was left on the scene, yeah.

2 Q And what was he doing?

3 A He was shooting.

4 Q How many rounds were in that MAC-10 that Sparacino had?

5 A 30 rounds.

6 Q How do you know?

7 A 'Cause I put them in there.

8 Q And how did you obtain that MAC-10?

9 A I obtained it from Frankie, BF.

10 Q Is that the gun you testified about earlier in the bag?

11 A Yes.

12 Q What, if anything, happened to your hat when you were receiving return fire?

14 A It flew off when I went down.

15 Q Where did you drive to?

16 A We had a prearranged spot where we were going to park and drop the car.

18 Q Do you remember where it was?

19 A It was only a couple blocks away.

20 Q Did you go there?

21 A Yes, I did.

22 Q What did you do when you got there?

23 A I told John leave the gun in the car and we got out and I took, I don't know why, but I took his hat off his head and put my gloves in there and just stuck it in a bush on the

1 corner.

2 Q You mentioned "John" just now.

3 Which John was it?

4 A Johnny Sparacino.

5 Q Why did you tell him to leave the gun in the car?

6 A Because we were told to leave the gun in the car.

7 Q By who?

8 A Michael told us, "Make sure you leave the gun in the  
9 car."

10 Q Which gun was this?

11 A The MAC-10.

12 Q Did you and Sparacino then step out of the car?

13 A Yes, we did.

14 Q What happened next?

15 A Well, as we got out of the car, we were walking towards  
16 the corner and BF and Johnny Pappa pulled up.

17 Q Were they in the same car?

18 A They were in Frankie's car, yes.

19 Q Frank Guerra's car?

20 A Yes.

21 Q And what did you do next?

22 A We got in the backseat and left.

23 Q What happened to Joe Scopo that night?

24 A He passed away.

25 Q After the Scopo murder, who, if anyone, from outside the

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1 murder crew talked to you about it?

2 A A couple days after that, I was sitting in front of my  
3 house and this kid Michael DeRosa pulled up.

4 Q Who was Michael DeRosa?

5 A Michael DeRosa was an associate of the Lucchese family.

6 Q And what, if anything, did he say to you?

7 A And he just came out with a big smile on his face and  
8 said that, "That was some job. That was some hit." And I  
9 just looked at him and said, "I don't know what you're talking  
10 about."

11 Q Other than Michael DeRosa, did anyone else outside the  
12 murder crew bring this up to you?

13 A Yes, Dino.

14 Q Who was Dino?

15 A Dino Calabro.

16 Q Who was he in organized crime?

17 A At the time, he was just an associate.

18 Q Of what family?

19 A Colombo crime family.

20 Q What did he say to you?

21 A It was basically the same thing, "That was some job yous  
22 did, some hit."

23 Q What did you say to him?

24 A "That was a nice piece of work."

25 I told him, "I don't know what you're talking

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1 about."

2 Q Why did you make that denial to DeRosa and Calabro?

3 A Because you shouldn't be talking about things like that.

4 Q Why not?

5 A Because you could get killed for doing that.

6 Q Killed for what?

7 A For talking about killing somebody.

8 Q Did DeRosa or Calabro tell you how they knew about it?

9 A Yes.

10 MR. SERCARZ: Objection, Your Honor. I would note  
11 that we're past the point of the conspiracy and engaging in  
12 this homicide.

13 THE COURT: I'll sustain.

14 Q After DeRosa and Calabro approached you about the Scopo  
15 murder, did you tell anyone?

16 A After DeRosa and, excuse me, say it again.

17 Q After DeRosa and Calabro approached you about the Scopo  
18 murder, did you report that fact to anyone?

19 A Yeah, we brought it to Michael's attention.

20 Q Who's "we"?

21 A Me and BF.

22 Q And who's "Michael"?

23 A Persico.

24 Q What did you say to him?

25 A We told him, "Eric's got a big mouth. He's telling

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1 everybody what we did."

2 Q Eric who?

3 A Excuse me?

4 Q Eric who?

5 A Curcio.

6 Q And what, if anything, did Michael Persico say back?

7 A He says, "He's your friend. Go talk to him."

8 Q Did you do that?

9 A Yes, we did.

10 Q What happened when you talked to Eric Curcio?

11 A He denied it all.

12 Q What else, if anything, did Eric Curcio say to you about  
13 the Scopo murder?

14 A He said a lot of things, Eric. He said we were all going  
15 to get straightened out, everybody's going to become captains  
16 of the family.

17 Q Did you report that to anyone, what Eric Curcio said to  
18 you?

19 A Yes, I -- yes, I did. Yeah, I did. I told Michael about  
20 it. I told him, "He's running his mouth saying that he's  
21 going up to see your brother and your brother's talking to  
22 him." And I asked him, "Does he talk to him? Does he go up  
23 and see Allie?" And Michael says, "I doubt it."

24 Q Who's the "Michael" you're talking about?

25 A Michael Persico.

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1 Q When you told Michael "he's running his mouth," who's the  
2 "he" there?

3 A Excuse me?

4 Q Who was running his mouth?

5 A Eric Curcio.

6 Q And when you mentioned someone's brother, who were you  
7 referring to?

8 A "Allie Boy" Persico.

9 Q Why did you report this to -- why did you report all this  
10 to Michael Persico?

11 A Because I wanted to know if his brother knew anything  
12 about this.

13 Q About what?

14 A About Eric saying all these things.

15 Q What, if anything, did Michael Persico say to you about  
16 that?

17 A Michael said, "My brother knows nothing about it. He met  
18 him once on a visit, said hello to him, that's it."

19 Q Who met who once on a visit?

20 A Allie met Eric on a visit at FCC one time and that was  
21 it.

22 Q After that, did you talk to Eric Curcio again about his  
23 prison visits?

24 A Yeah, he had a problem with, I think, Chucky Russo and he  
25 told me he's not going up there no more.

1 THE COURT: I'm sorry, who had the problem?

2 THE WITNESS: Eric Curcio had an argument on a visit  
3 with Chucky Russo and he said he wasn't going to go visit him  
4 no more, he's had it, you know.

5 Q Eric said he wouldn't visit Chucky Russo anymore?

6 A Yeah, he's not going to visit him no more.

7 Q After the Scopo murder, did you ever discuss John  
8 Sparacino with Eric Curcio?

9 A Yeah, I believe I did, yes.

10 Q What, if anything, did Curcio say about Sparacino?

11 A He said he was running his mouth.

12 Q Who was running his mouth?

13 A Johnny Sparacino.

14 Q And after that, did you ever discuss Sparacino with John  
15 Pappa?

16 A Well, Eric Curcio and Johnny Pappa are the ones that told  
17 me and BF that Johnny Sparacino was running his mouth about  
18 the Joe Scopo murder.

19 Q Do you recall a time when John Pappa came to you about  
20 Sparacino?

21 A Yeah, it was -- I can't remember the time frame, but he  
22 came to my house one day and asked me to help him steal a car  
23 and I told him I don't steal cars.

24 Q What happened next?

25 A So he's telling me, "I need your help." And I was like,

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1 "Why do you need a car?" And he told me straight up and down  
2 that he just killed Johnny Sparacino.

3 Q Pappa told you he killed Sparacino?

4 A Yeah.

5 Q Is that right?

6 A Him and Calvin, yeah. He needed a car so he could put  
7 the body in there and get rid of it.

8 Q Who was that Calvin that you mentioned?

9 A Calvin, it was a friend of Johnny Pappa.

10 Q What did you do when Pappa reported this to you?

11 A I said let me help him 'cause, you know, he just helped  
12 us do something, so I figured return the favor.

13 Q What did you do to help him?

14 A We -- we went to Frankie's house, BF, and I told him we  
15 need to get a car and I explained to him what happened, and  
16 then we went and got John Matera and we went and got a car.

17 Q Who was John Matera?

18 A John Matera was a friend of Frankie's, BF.

19 Q How did the three of you get a car?

20 A We stole it.

21 Q And where did you take it after that?

22 A We drove it to Staten Island.

23 Q To where in Staten Island?

24 A We drove it to Calvin's house.

25 Q What happened when you got to Calvin's house?

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1 A We went inside and Calvin started telling us what  
2 happened and we went to the basement and John Sparacino was  
3 laying on the floor in the basement dead.

4 Q When you were in the basement, what, if anything, did  
5 Pappa say to you?

6 A He said a bunch of things, you know. He said, "Look at  
7 him now, big mouth." Then he told me about, "You remember  
8 when he called you a BJ."

9 Q Pappa said that to you?

10 A Yeah.

11 Q What did you say?

12 A I said, "Yeah, I remember when you told me that he said  
13 that."

14 Q That who had said that?

15 A That Johnny Sparacino had called me a blow job.

16 Q What happened next?

17 A I don't know what happened, but all I remember is a knife  
18 coming out and we -- we cut his penis off and stuck it in his  
19 mouth.

20 Q Who did that?

21 A John.

22 Q John Pappa?

23 A Yeah, me and John.

24 Q You and John Pappa did that?

25 A Yes.

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1 Q What happened with Sparacino's body after that?

2 A We wrapped him up and threw him in the back of the car,  
3 and Johnny Pappa and Calvin and me and BF went our way, they  
4 went their way with the stolen car with the body in it.

5 Q Let me just unpack that a little bit.

6 Who wrapped the body up?

7 A We wrapped Johnny Sparacino up.

8 Q Who did that?

9 A All of us.

10 Q And what did you wrap him up in?

11 A I believe it was a rug.

12 Q And then whose car was the body placed in?

13 A The stolen car.

14 Q Who got in that car?

15 A Johnny Pappa and Calvin.

16 Q And where did you go?

17 A I went home.

18 Q In a separate car?

19 A In my car, yes.

20 Q With who?

21 A With BF and John Matera.

22 Q After Sparacino was murdered, did you ever discuss him  
23 with anyone else?

24 A I don't remember.

25 Oh, yeah, yeah, yeah, Eric, yeah.

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1 Q Eric Curcio?

2 A Yeah.

3 Q What did Curcio say to you?

4 A Eric wasn't there at the time, but he came -- he was in  
5 Florida at the time. He came back from Florida and he asked  
6 to see me and BF. It was a couple days after it, a day or two  
7 after the murder of Sparacino, and we met him and it was late  
8 at night and we just thought he wanted to talk to us about  
9 something, and out of nowhere, he just said, "I took care of  
10 that for us." And we asked him, "What did you take care of?"  
11 He said, "I killed Johnny Sparacino the other day."

12 Q Who said that?

13 A Eric Curcio.

14 Q And did you know if that was true or false?

15 A It was definitely a lie. He wasn't there.

16 Q What happened to Eric Curcio?

17 A He got killed.

18 Q Were you present for any part of his murder?

19 A No.

20 Q Did you question anyone about it?

21 A Yes.

22 Q Who?

23 A Johnny Pappa.

24 Q What did you ask him?

25 A I asked him, "What happened? And did you have anything

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1 to do with this?"

2 Q How did he respond?

3 A He responded by laughing hysterically and didn't say a  
4 word, just laughed.

5 Q What did you believe that meant?

6 A Just my personal opinion, I believe he killed him.

7 Q At some point after the Scopo murder, did Alphonse  
8 Persico, who I think you called "Allie Boy," return home from  
9 jail?

10 A Yes.

11 Q In what year, approximately?

12 A '94.

13 Q Did you or anyone close to you visit him after his  
14 release?

15 A Yeah, BF went to visit him.

16 Q Did BF report to you about the visit?

17 A Yes, he did.

18 Q What did BF report to you?

19 A BF told me he was upstate with Allie and that, "When he  
20 gets hit -- when he gets back to Brooklyn, he wants to meet  
21 you and that me and you are going to report to him."

22 Q So, when you said BF mentioned being upstate with Allie,  
23 what did you understand "upstate" to mean?

24 A The house upstate that he owns.

25 Q That who owns?

1 A "Allie Boy."

2 Q And Allie said what to BF, according to BF?

3 A That when he gets back to New York -- when he gets into  
4 Brooklyn, he wants to meet me and that from here on in that me  
5 and BF report to him.

6 Q After that, did you meet "Allie Boy" Persico?

7 A Yes, I did.

8 Q Where?

9 A I believe it was in Romantique.

10 Q In Brooklyn?

11 A Yeah.

12 Q What, if anything, did "Allie Boy" Persico --

13 MR. LIFSHITZ: Strike that.

14 Q Who were you with when you met "Allie Boy" Persico at  
15 Romantique?

16 A BF.

17 Q What, if anything, did "Allie Boy" Persico say to you and  
18 BF?

19 A He told us that -- he told us a few things. I don't  
20 remember everything. I remember him telling us that once he  
21 puts things back together in the family, that me and BF would,  
22 you know, get what we had coming to us and things like that,  
23 that we -- that he wanted me and BF around him.

24 Q Was the Colombo family war still going on at this point?

25 A No.

1 Q When "Allie Boy" Persico mentioned putting the family  
2 together, what did you understand that to mean?

3 A Meant putting it back together because there was a lot of  
4 people that they wanted to come back in and, you know, they  
5 were afraid to come back in. So he was working on putting it  
6 back together.

7 Q The Colombo family?

8 A Right.

9 Q And I believe you said he mentioned you and BF would get  
10 what was coming to you, is that the phrase you used?

11 A Yes.

12 Q What did you understand that to mean?

13 A Be made members of the family.

14 Q So, what was the result of "Allie Boy" Persico saying he  
15 wanted you and BF around him?

16 A Excuse me?

17 Q What was the result of him telling you that you and BF  
18 would be around him?

19 A The result was we were.

20 Q To be clear, up to that point, who were you and BF  
21 reporting to?

22 A We were hanging out with Michael.

23 Q After "Allie Boy" told you, in your understanding, that  
24 he wanted you two to get inducted, when, if ever, did you  
25 discuss that subject again with him, with "Allie Boy"?

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1 A Like a year or two later.

2 Q And after that, when, if ever, did you discuss it again?

3 A With Allie?

4 Q Yes, with Allie.

5 A I only discussed it with Allie that one time when me and  
6 BF were in his office.

7 Q His office where?

8 A On Romantique.

9 Q Around what year was that?

10 A '96, '97.

11 Q Were you still on parole from your assault case?

12 A Yes.

13 Q Were you allowed to meet with "Allie Boy" Persico?

14 A I wasn't supposed to, no.

15 Q Did you ever learn whether law enforcement knew you had  
16 met with him?

17 A Yes.

18 Q How did you learn that?

19 A It was in my house when Michael's cousin came to my  
20 house.

21 Q Who?

22 A Michael Persico's cousin Frankie came to my house and  
23 told me that, "We have a little problem, that you're on tape,"  
24 meaning with Allie and Michael.

25 Q Did he say --

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1 A "And it might be a problem with your parole."

2 Q Did he say at what location the tape showed you meeting  
3 with him?

4 A I don't remember if he told me the location where we met.

5 Q Did you ever see that tape?

6 A Yes, I did.

7 Q How were you able to see that tape?

8 A I know my parole officer might have showed it to me,  
9 definitely showed it to me when I reported in one day.

10 Q Did it depict you with Michael Persico and Allie Persico?

11 A Yes, it did.

12 Q In the mid-'90s after the Scopo murder, how did you make  
13 money?

14 A I was shaking down drug dealers, selling drugs, I was  
15 loansharking.

16 Q Can you define "loansharking" for us, please?

17 A You lend people money for a percentage back.

18 Q Is there a term for the percentage?

19 A It's called the juice, the vig.

20 Q How often is that juice, vig percentage paid?

21 A Every week.

22 Q Does paying the interest reduce the principal of the  
23 loan?

24 A No, not at all.

25 Q Can just anyone engage in loansharking?

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1 A Not really, no.

2 Q Who can do that?

3 A I mean, you -- most of the people I ever met that were  
4 doing shylocking were always around one of the five families.

5 Q Did you have a partner in your loansharking business?

6 A Yes, I did.

7 Q Who was that?

8 A BF.

9 Q And in the mid-'90s, how did you and BF get money to  
10 extend loan shark loans?

11 A From Michael.

12 Q Michael Persico?

13 A Yes.

14 Q On what terms?

15 A We used to borrow money from him for a point.

16 Q You just used the word "point."

17 What is a point?

18 A Like one percent.

19 Q So "point" is another term for the percentage?

20 A Yeah.

21 Q And how often did you have to pay the point?

22 A Well, in the beginning, we used to give it every week and  
23 then Michael said, "Just see me like once a month with the  
24 juice."

25 Q What interest or points did you charge the people you

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1 made loansharking loans to?

2 A Most of the time it was three points. Some people we got  
3 it for two-and-a-half.

4 Q What advice, if any, did Michael Persico give you about  
5 loansharking?

6 A He said that it's not a business you stay in forever.

7 Just try to make as much money as you can from it, save your  
8 money, and try to do something else with it.

9 Q Over what period, approximately, did you and Frank Guerra  
10 borrow money from Michael Persico to make loansharking loans?

11 A When I got home in -- around -- after '93, around '93 to  
12 '96, '7 we were asking for money for a few years.

13 Q About how much money in total did you and Guerra borrow  
14 from Michael Persico for that purpose?

15 A Hundred and fifty, 200. I'm not sure exact number.

16 THE COURT: You mean thousand?

17 THE WITNESS: Thousands, yes.

18 Q 150,000 or 200,000?

19 A Yeah, around there. I'm not exactly sure. It's a long  
20 time ago.

21 Q So, if the number was 150,000, how much were you  
22 obligated to pay Michael Persico?

23 A The one point.

24 Q What would that be?

25 A 1500.

1 Q How often?

2 A Like I said, in the beginning, we would give him every  
3 week and then he just said, "Listen, just see me once a  
4 month." So, it was around once a month.

5 Q Where did you typically meet him to pay him?

6 A Wherever he was. We'd call him, see where he was doing,  
7 hang out, go to eat dinner, see him at Romantique.

8 Q Did you and BF ever have trouble paying Michael Persico?

9 A Not in the beginning, no.

10 Q Did that change?

11 A Later on, maybe like a year-and-a-half, two years later,  
12 maybe earlier. I don't remember.

13 Q Why did you and Guerra have trouble paying?

14 A 'Cause guys that borrow money, they're a liability and a  
15 lot of them just disappear on you. You got to hunt them down,  
16 look for them to find your money.

17 Q You were having trouble doing that?

18 A We had trouble with a couple guys, yeah.

19 Q What, if anything, did you say to Michael Persico?

20 A We told him that we were having problems. When he asked  
21 us how come the money's not ready, we would tell him we were  
22 having problems with people.

23 Q What, if anything, did he say back?

24 A In the beginning, he was -- he was good about it and  
25 after a while, he just said, "Listen, yous got to bring my

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1 money back."

2 Q What did you understand that to mean?

3 A "Get my money."

4 Q After that, did you and BF collect your loansharking  
5 money?

6 A We started going after some of the money people owed us,  
7 yes.

8 Q Did you assault some of those people?

9 A Yes.

10 Q Was there a customer called Lenny?

11 A "Fat Lenny," yes.

12 Q What did you do to him?

13 A I gave him a beating on 13th Avenue.

14 Q How much money did he owe you?

15 A Around \$30,000.

16 Q What happened after you beat him?

17 A I was told by Michael that don't worry about Lenny,  
18 everything's taken care of, that Tony Anastasio was going to  
19 take care of it.

20 Q Tony Anastasio?

21 A "Tony Anastasio worked out something. I'll get my money.  
22 Don't worry about it."

23 Q Michael Persico said that to you?

24 A Yes.

25 Q Who was Tony Anastasio?

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1 A I didn't know who he was at the time. Then I found out  
2 he was a made member of the Gambino crime family.

3 Q Did you have a loansharking customer called Tony?

4 A Yeah, Tony, yes.

5 Q About how much did he owe you and BF?

6 A Seven or \$8,000.

7 Q Seven or eight?

8 A Yeah.

9 Q What did you do to him?

10 A I gave him a beating.

11 Q What happened next?

12 A He ran to somebody to try to squash it.

13 Q Do you remember who he ran to?

14 A Yeah, the first person he ran to was a guy named Joe C.  
15 He was a made member of the Genovese family.

16 Q What happened next?

17 A And me and BF went to meet him and -- at a diner on Kings  
18 Highway.

19 Q You met Joe C?

20 A Joe C., yes.

21 Q And what happened?

22 A And he was telling us that, "The guy's a bum. He's got  
23 no money. I could get you two, three thousand dollars and,  
24 you know, settle for that." And I was like, "I can't make  
25 those decisions. It's not my money to make that decision."

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1 Q Whose money was it?

2 A Michael's.

3 Q Did you report this conversation to anyone?

4 A Yes. At the time, Allie was home and we told Allie about  
5 it.

6 Q Alphonse Persico?

7 A Yeah.

8 Q What did you say to him?

9 A We told him that this guy's playing games, this guy Joe  
10 C., and he's talking about giving us two, three thousand  
11 dollars to settle the deal, to squash the beef. And Allie  
12 told us, "Tell him to wait there. If he's still at the diner,  
13 tell him to wait there." And we went there, me, Allie and BF,  
14 and Allie just didn't like the guy, so he told him --

15 Q Who was Allie talking to at this point?

16 A Joe C.

17 Q Go ahead.

18 A And he told him straight up and down, "What's the  
19 problem?" Joe C. explained to him the same thing he explained  
20 to us about the two, three thousand dollars. He told Allie,  
21 "The guy's a bum. He's worthless." And Allie told him --  
22 looked at me and said, "Ant, just keep beating him up until he  
23 gives you the money," and walked out.

24 Q And what happened next with this?

25 A Somebody else came along, "Big Louie." He was friends

1 with "Big Louie's" brother.

2 Q Who was "Big Louie"?

3 A "Big Louie" was a captain in the Gambino family.

4 Q So who did "Big Louie" talk to?

5 A "Big Louie" came -- I was in Romantique's on 11th Avenue  
6 one day and I was standing there and I forgot what happened,  
7 but Big Louie and Huck were --

8 Q Who's Huck?

9 A He was a made member of the Gambino family.

10 Q Go on.

11 A They came back and I seen them. Said hello to them, they  
12 went into Romantique. I don't know how long it was. They  
13 came back out a little while later and Allie came out and he  
14 told me, "Don't worry about that money. It's a done deal.  
15 I'll make sure when I get the money I give it to my brother."

16 Q Was there a customer called Santos?

17 A Yes.

18 Q How much money did he owe you?

19 A I don't remember exactly, three, four thousand, maybe  
20 more. I don't know.

21 Q What did you do to him?

22 A Well, he was playing a lot of games, and I went to his  
23 house one day and I just happened to be leaning on the steps  
24 of his house and it was a brick fence there and at the same  
25 time I leaned on the brick, he opened the door and the brick

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1 was loose, so I had a brick in my hand and I hit him with it.

2 Q Around this time in the mid-1990s, did you ever talk to  
3 Michael Persico about whether anyone else in the Colombo  
4 family owed him money?

5 A We discussed it a couple of times, yeah. Some couple  
6 other people.

7 Q What, if anything, did Michael Persico say?

8 A He asked me to reach out to Bobby Tarantola one time.

9 Q About what?

10 A About money that was owed to him, that he stopped paying,  
11 and he just told me, "Listen, tell him forget about the juice.  
12 Just tell him to get my money to me."

13 Q Who was Bobby Tarantola at that time?

14 A He was an associate of the Colombo family.

15 Q Who else, if anyone, did Michael Persico talk to you  
16 about?

17 A I believe Anthony Ferrara owed him money, at times owed  
18 Michael money.

19 Q Who told you that?

20 A Anthony told me he borrowed money to buy a car one time.

21 Q From?

22 A From Michael.

23 Q Did you know why Bobby Tarantola borrowed the money?

24 A I don't know why he borrowed the money, no.

25 Q Did anyone tell you the terms of those loans from

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1 Michael?

2 A Well, Michael told me to go talk to him about it, "See  
3 what he's doing with my money. Tell him not to -- to forget  
4 the juice." So evidently he was paying juice on it.

5 Q And that would refer to Bobby Tarantola?

6 A Right.

7 Q Shifting topics now.

8 Have you ever been involved in a scheme to sell  
9 stolen video games?

10 A Yes.

11 Q In what year?

12 A In the '90s, mid-'90s.

13 Q How did you first become involved in that?

14 A I was in my car service on Bay Parkway one day. I  
15 believe my father brought it up to me about a guy had a  
16 truckload of video games.

17 Q Were they stolen?

18 A Stolen video games, yes.

19 Q What did you do when you learned that?

20 A I wanted to buy the load. I was trying to scrape the  
21 money together.

22 Q Did you meet the person who had the games?

23 A Yes.

24 Q Who was he?

25 A Some guy named Spider.

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1 Q What did you say to each other?

2 A He told me what he wanted and I told him I'll try to, you  
3 know, get the money 'cause I'd like to buy the load 'cause it  
4 was nice load to hold on to, especially it was a couple months  
5 before Christmas.

6 Q What did Spider tell you he wanted?

7 A He wanted 75,000 for the whole load, tractor trailer  
8 load.

9 Q Did you see the video games yourself?

10 A Not until I reached out for the money.

11 Q Okay. So walk us through that.

12 After Spider told you how much he wanted, what did  
13 you do next?

14 A I reached out and I believe I brought it up to Michael.  
15 Michael told me he'll look into it, and then he came back to  
16 me and told me he has a friend on 18th Avenue and I forgot the  
17 street, it was a little storefront there.

18 Q What did he tell you about this friend?

19 A His friend would give us the money and he'll buy the  
20 whole load from us.

21 Q Did you go see the friend on 18th Avenue?

22 A Yes, and we got 75,000 from him.

23 Q Who's "we"?

24 A Me, BF.

25 Q What did you do next after you got that money from the

1 man on 18th Avenue?

2 A Well, I had the money and I -- he needed a truck to bring  
3 the load to us. So I made my father rent a truck, a Ryder  
4 Truck, and gave it to him to use to bring -- he was going to  
5 bring it in two loads, first load half and then the other load  
6 half the second time around, and I was going to give him  
7 35,000 every time he brought a load.

8 Q So two payments of 35,000?

9 A Yeah.

10 Q Did you have a plan about where to put these video games?

11 A Yeah, we were going to put them in -- in the garage of  
12 the bus company in Coney Island.

13 Q What bus company?

14 A Michael's bus company.

15 Q How did you come to plan to put them there?

16 A We asked Michael where we could do it. He said no one's  
17 using it over there, use the garage.

18 Q So, I think you mentioned BF going with you.

19 Who else, if anyone, became involved in this plan?

20 A It was me, BF, Little Anthony and Scotty.

21 Q Who was Little Anthony?

22 A Anthony Ferrara.

23 Q And who was Scotty?

24 A Scotty Reback.

25 Q And who are they in organized crime?

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1 A Associates of the family, of the Colombo family.

2 Q Did Spider then bring you any video games?

3 A Yes, he did.

4 Q In what vehicle?

5 A In the rented truck that my father rented.

6 Q What happened next?

7 A He showed me the load, and we were going back to the car  
8 service when I spotted what looked like agents.

9 Q What were they doing when you spotted them?

10 A They were taking pictures with a six-foot lens.

11 Q What did you do next?

12 A I -- I took him into the car -- car service and I -- I  
13 made him strip down.

14 Q Who did you make do that?

15 A Spider. I thought he set me up.

16 Q So why did you make him strip down?

17 A So I could see if he had a wire in him.

18 Q Did you see anything like that?

19 A No.

20 Q What did you do next?

21 A I told him, "You got an hour to get rid of that truck and  
22 that load and then I'm reporting it stolen."

23 Q Did you ever actually acquire these video games from  
24 Spider?

25 A No, never.

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1 Q You may have said this, but how much money by this point  
2 had you gotten from the man on 18th Avenue?

3 A I forget, it was either 70 or 75,000.

4 Q What did you do with that money after you ordered this  
5 plan?

6 A I had it for a couple of days.

7 Q What happened next?

8 A Michael came down my block. I was hanging out in front  
9 of my house and Michael happened to be coming down and he just  
10 smiled at me. He said, "Are you ever going to give that money  
11 back to my friend?"

12 Q Michael who?

13 A Persico.

14 Q What did you say?

15 A I said, "Yes."

16 Q What did you do?

17 A I gave it back.

18 Q In the mid and late 1990s, did you have any legitimate  
19 businesses?

20 A In the late '90s?

21 Q Yeah.

22 A Yeah, I opened up a liquor store.

23 Q Where was the liquor store?

24 A In Staten Island.

25 Q Where did you get money to open a liquor store?

1 A From my friends.

2 Q Who were your friends?

3 A Frankie Persico, Michael Persico, Anthony Stropoli.

4 Q Who was Anthony Stropoli?

5 A He's a made member of the Colombo family.

6 Q And Frank Persico, I believe you testified earlier, is a  
7 cousin of Michael Persico; is that right?

8 A Yes.

9 Q Was the liquor store successful?

10 A It was in the beginning.

11 Q And then?

12 A I screwed up.

13 Q What do you mean?

14 A I bought liquor that I shouldn't have bought. When  
15 you -- you know, at a time when you don't -- after the  
16 holidays, you shouldn't be buying all the liquor I bought.

17 Q Did the store suffer as a result?

18 A It suffered a little bit, yeah.

19 Q Who, if anyone, did you discuss that with?

20 A Well, I was holding on to the store until I got arrested,  
21 and then when I got arrested, my ex-girlfriend didn't want to  
22 be bothered with the store no more. So I didn't know what to  
23 do, so I discussed it with Michael.

24 Q You mentioned this happening when you were arrested.

25 Which arrest was this?

1 A I was arrested in '99, the end of '99, beginning of 2000.

2 Q Federal case or state case?

3 A Federal case, yeah. I was indicted on a RICO charge.

4 Q Just to back up one step.

5 After you were arrested, what did you decide to do  
6 with the store?

7 A Well, after my girlfriend came to me and told me she  
8 didn't want to be bothered with the store no more, I discussed  
9 it with Michael.

10 Q What did you say to him?

11 A I told him --

12 MR. SERCARZ: Objection, Your Honor. Your Honor,  
13 we've been told what subject matter would be covered at the  
14 hearing, and I would respectfully submit this is outside the  
15 scope.

16 MR. LIFSHITZ: We're covering a 20-year racketeering  
17 conspiracy that's been disclosed for a long time, and his  
18 association with Michael Persico over the years is highly  
19 probative.

20 MR. SERCARZ: The presentence report contained  
21 allegations regarding certain conduct that the Government  
22 claimed they were going to prove at a Fatico hearing, and this  
23 goes far, far afield, I respectfully submit.

24 THE COURT: I would agree.

25 I just want to remind the parties based on one of

1 the latest submissions, August 4th, 2016, page 2 of that  
2 letter indicated what was going to be proved.

3           Well, one portion of it, the first part says:  
4 "First, the defendant has participated in racketeering as a  
5 long-time associate of the Colombo family and has at times  
6 been involved in managing the crime family's members and  
7 associates." And the acts in the indictment go up to 2010.

8           So overruled.

9           MR. LIFSHITZ: Thank you, Your Honor.

10 BY MR. LIFSHITZ:

11 Q       I may be backing up a question or two, Mr. Russo, but you  
12 said you went to Michael Persico after you were arrested.

13           What do you recall saying to him about the liquor  
14 store?

15 A       I remember bringing it to his attention that I was having  
16 problems with the store.

17 Q       What did he say?

18 A       And he gave me some choices that would help me out.

19 Q       What were those choices?

20 A       You know, "Work it and try to fix it on your own or maybe  
21 you could give it to me and we'll take it over 'cause you're  
22 going to go to jail anyway, so, and we'll run it. You know,  
23 we'll take care of it."

24 Q       What did you decide to do?

25 A       I decided to turn it over to Michael.

1 Q And what did he tell you he would do with it?

2 A He told me that him and Carl would take care of it, Carl  
3 Panarello.

4 Q Who was Carl Panarello?

5 A He was an associate of the Colombo family.

6 Q And what happened to the business?

7 A I gave it to them. Carl came in, he started working the  
8 store. They asked me if my father-in-law -- well, my  
9 girlfriend's father, 'cause it was under his name, the  
10 license, if he can leave it under his name for a year or so  
11 and when everything's worked out and everything's back to  
12 normal, the store's making money again, they would work it out  
13 where they, you know, buy it from my father-in-law, take over  
14 the store.

15 Q What happened to the store next?

16 A What happened to the store, they sold it.

17 Q Did you profit from that?

18 A Did they profit from it?

19 Q Did you profit from that?

20 A No, not at all.

21 Q Did you lose any money?

22 A Not really, no.

23 Q In the late 1990s, did you talk to anyone in the crime  
24 family about who would get inducted into the crime family?

25 THE COURT: I'm sorry, what was that time frame?

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1 MR. LIFSHITZ: The late 1990s.

2 Q Let me ask it a different way.

3 In the late 1990s, who, if anyone, told you that he  
4 was getting inducted into the crime family?

5 A Anthony Stropoli.

6 Q And who was Stropoli at that time?

7 A Who was Anthony Stropoli? He was an associate in the  
8 Colombo family.

9 Q What, if anything, did he tell you about himself maybe  
10 getting inducted?

11 A He told me that he was getting inducted and straightened  
12 out and became a -- you know, in the Colombo family.

13 Q Did he mention any other names?

14 A He mentioned a couple names, yes.

15 Q Who?

16 A He mentioned Dino. He said some guy from Boston, he  
17 didn't know who he was. He said Andre.

18 Q Who was Dino?

19 A Dino Calabro.

20 Q And who was Andre?

21 A Andre, I forgot his last name. He's a -- he was an  
22 associate. He's close to "Allie Boy."

23 Q Just so the record is clear, what did Stropoli tell you  
24 about these people, Andre, Dino and someone from Boston?

25 A He told me they were all getting straightened out.

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1 Q Were those men then in fact inducted into the Colombo  
2 family?

3 A Yes.

4 Q When Stropoli told you he and those other men would get  
5 inducted, what was your reaction?

6 A I was upset.

7 Q Why?

8 A Because I thought I deserved it before a couple of them.

9 Q I'm sorry?

10 A I thought I deserved it before a couple of them.

11 Q Why did you believe that?

12 A Because basically I ended the war, me and my guys.

13 Q How did you end the war?

14 A By killing Joey Scopo.

15 Q Did you express to anyone the fact that you were upset  
16 about this?

17 A Yes.

18 Q Who?

19 A My partner, BF.

20 Q Who, if anyone, next approached you to discuss the fact  
21 that you were upset?

22 A You know, all I know is that I expressed disappointment  
23 to BF, and next day I was in my liquor store and Frankie  
24 Persico and Anthony Stropoli walked in and they were a little  
25 upset with me and they were telling me, "Why did you do that?"

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1 How could you do that? You know it could get me in trouble."  
2 And I was like, "What are you talking about?" And they were  
3 telling me that, "One of your dear friends went up to Michael  
4 and told him you expressed disappointment in not being  
5 straightened out on that list." I said, "I don't think BF  
6 would do something like that." And they basically told me  
7 straight up and down, "No, it was BF." And then I went back  
8 to BF and I asked him and he said, yes, he did, "But I was  
9 just -- I was concerned about you."

10 Q Who said "I was concerned about you"?

11 A BF.

12 Q And what did you say --

13 A 'Cause he didn't want me to get in trouble and  
14 expressing, you know, saying things that could get you in  
15 trouble, 'cause I was a little upset at the time.

16 Q What did you say back to BF?

17 A I told him, "What's wrong with you? You get me killed  
18 doing something like that."

19 Q Why did you believe that could get you killed?

20 A 'Cause it could get you killed.

21 Q What could get you killed?

22 A Talking the way I was talking.

23 Q Talking about what?

24 A About being straightened out; I deserve it; you know, I  
25 ended the war.

1 Q Are you familiar with a man named Arthur Alonzo?

2 A Sure, I am, yes.

3 Q Who was he?

4 A He was a -- a kid that hung around me and BF.

5 Q Did you ever become involved in a dispute he was part of?

6 A Yes.

7 Q Approximately when?

8 A Early '90s, mid-'90s.

9 Q How did you come to be involved in the dispute?

10 A He -- he worked in the stock market. He was a -- he was  
11 a stockbroker and he was friendly with me and BF and he did  
12 things for us, and he was leaving one firm going to another  
13 and basically he just lied to us and me and Frankie didn't  
14 know any better and when he told us about the leads that he  
15 had --

16 MR. SERCARZ: Your Honor, forgive me for  
17 interrupting the witness. May we have a date before this  
18 continues so we can see whether it's within the parameters of  
19 the hearing?

20 THE COURT: Yes.

21 What time frame are we talking about?

22 MR. LIFSHITZ: I would ask the witness what time  
23 frame he recalls.

24 MR. LIFSHITZ: But also this is Giglio.

25 THE COURT: What time frame are you talking about

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1 here?

2 THE WITNESS: Mid-'90s.

3 Q This Arthur Alonzo dispute was in the mid-'90s?

4 MR. SERCARZ: May I approach the Government for a  
5 moment just to make sure that we're not going into an area  
6 that's going to be a problem?

7 THE COURT: Why don't we take maybe a five minute  
8 break and we'll resume in about five minutes.

9 The witness can leave.

10 (Witness leaves the witness stand.)

11 THE COURT: By the way, counsel, while you're at it,  
12 I had originally planned to continue this hearing in the  
13 afternoon. Unfortunately, I have some other matters that came  
14 up that I have to address. So if you want to discuss a date  
15 amongst yourselves, or several dates, because it looks like  
16 we're going to need to continue the hearing.

17 MS. KEDIA: Judge, what time are we going to go  
18 until today?

19 THE COURT: About one o'clock.

20 MR. SERCARZ: Your Honor, do I take it that tomorrow  
21 is not going to work to continue this?

22 THE COURT: No. This week is definitely out. If  
23 you want me -- I actually have the morning of August 16th  
24 open, which is next Tuesday, and I currently have the  
25 afternoon of August 17th open and I have all day Wednesday,

1 the 24th right now, just so you have several days that you can  
2 work with. I also have the afternoon of Tuesday, August 23rd  
3 open. This is all as of right now and my schedule changes  
4 with every passing minute of the day. Just to give you an  
5 idea.

6 MR. LIFSHITZ: Yes, thank you.

7 THE COURT: I gather you have two witnesses.

8 MR. LIFSHITZ: Two witnesses.

9 THE COURT: And I don't know if the defense wants to  
10 put on a case.

11 MR. LIFSHITZ: I expect we'll finish our direct by  
12 one and then the Government will certainly be flexible in  
13 scheduling. Our main logistical issue is transporting the  
14 witness who doesn't live in the New York City area.

15 THE COURT: Well, you'll work that out whatever  
16 among those days are best for everybody.

17 MR. SERCARZ: Thank you, Your Honor.

18 MS. KEDIA: Thank you.

19 THE COURT: You're welcome.

20 (Recess taken.)

21 THE COURT: This is a Fatico hearing continued. We  
22 have the same appearances as this morning.

23 The only thing I want to address before we bring the  
24 witness out is in connection with the objection that was last  
25 made. Well, it wasn't really an objection. Mr. Sercarz had

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1 asked to speak with the Government I suppose about the extent  
2 of the testimony, if I'm recalling correctly.

3 MR. SERCARZ: That's right, Your Honor.

4 THE COURT: So I figured we could discuss that  
5 before we bring the witness out. We'll bring the witness out  
6 and then when we break about one o'clock or so we can talk  
7 about the schedule.

8 MR. SERCARZ: We've had the conversation and I've  
9 been reassured by Mr. Lifshitz that the line of questioning he  
10 is currently intending to pursue deals with crimes committed  
11 by this witness and that he will confine himself to any  
12 statements allegedly made by my client that were made during  
13 the course of the conspiracy, and in particular the acts which  
14 the Government has indicated they intend to offer at the  
15 Fatico hearing.

16 So until I hear otherwise, I'm satisfied with that.

17 THE COURT: Okay.

18 MR. LIFSHITZ: Just to clarify.

19 THE COURT: Yes, sir.

20 MR. LIFSHITZ: I'm going to ask him about two  
21 extortions involving stockbrokers. He started testifying  
22 about one.

23 THE COURT: Right, that was one of the topics that  
24 was indicated by the Government.

25 MR. LIFSHITZ: That crime did not involve Michael

1 Persico. It's offered as the witness's Giglio.

2 Then he extorted another stockbroker. Michael  
3 Persico did not participate in that extortion, but it  
4 culminated in a discussion between the witness and Alphonse  
5 Persico about the fact that the witness owed the loansharking  
6 money to Michael Persico. So that will come up.

7 THE COURT: I see, all right.

8 So, let's bring out the witness.

9 (Witness resumes the witness stand.)

10 THE COURT: You may have a seat, sir. I remind you  
11 that you're still under oath.

12 This is continued direct examination by the  
13 Government. You may proceed when you are ready, Mr. Lifshitz.

14 MR. LIFSHITZ: Thank you, Your Honor.

15 BY MR. LIFSHITZ:

16 Q Mr. Russo, before the break, do you remember testifying  
17 about a man named Arthur Alonzo?

18 A Yes.

19 Q Can you remind us what his job was?

20 A He was a stockbroker.

21 Q Were you ever involved in a dispute that he was part of?

22 A Yes.

23 Q Can you walk us through what happened in that dispute?

24 A He came to me and Frankie about --

25 Q Frankie who?

1 A BF.

2 About a problem he was having going from one firm to  
3 another. He was trying to go to another firm and he was  
4 trying to take leads with him as phone numbers of people that  
5 buy stock, and basically he lied to us saying that they were  
6 his. We found out later on after everything that the firm  
7 usually holds on to the leads once you accumulate leads.

8 Q What did you and BF do when Arthur Alonzo presented this  
9 situation to you?

10 A We went to the firm he was working for and we tried to  
11 get the leads for him, and the owner, we gave him a beating.

12 Q Who did that?

13 A Me, BF, couple other guys that were there.

14 Q Other than this situation, have you ever assaulted anyone  
15 else in the stockbroking business?

16 A Me?

17 Q Yes.

18 A Not that I remember.

19 Q Did you ever become involved in a dispute that Bobby  
20 Tarantola was part of?

21 A Yes, yes, yes.

22 Q What was the dispute?

23 A Bobby did something with a stockbroker where the guy beat  
24 him for a hundred thousand dollars.

25 Q Who owed who that money?

Russo - Direct / Lifshitz

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1 A A stockbroker owed Bobby a hundred thousand.

2 Q How did you get involved?

3 A Bobby came to me and Frankie.

4 Q Frankie who?

5 A BF.

6 Q What did Bobby say to you and BF?

7 A He asked us if we would help him get the money back. He  
8 knew where the guy was, where he worked.

9 Q Did you agree to help him?

10 A Yes.

11 Q So what did you and BF do?

12 A We went with Bobby and laid on the guy in Long Island.

13 Q Before you did that, did you seek permission from anyone?

14 A Yeah, we talked to Allie about it.

15 Q Alphonse Persico?

16 A Yes.

17 Q What did you do when you laid on him, as you said?

18 A We waited for him to come out of work and we caught him  
19 coming to his car and we gave him a beating.

20 Q What happened after that beating?

21 A The next day I got a phone call from a member of the  
22 Gambino family.

23 Q What was his name?

24 A Ronnie, Ronnie "One Arm."

25 Q Ronnie "One Arm"?

Russo - Direct / Lifshitz

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1 A Yeah.

2 Q What did he say to you?

3 A He asked me if I would be able to see him that day.

4 Q Did you agree?

5 A Yes.

6 Q What happened when you met him?

7 A I met him and we discussed -- he asked me what I did the  
8 night before, and I was like, "What do you mean by that?" And  
9 he says, "Did you have fun last night?" And I said, "Yeah.  
10 Why, did you?" I said, "What do you mean by that?" And he  
11 says, "You ran into a friend of mine. He's missing a watch."  
12 And I was like, "Yeah." I said, "You're talking about the  
13 stockbroker kid?" He said, "Yes." And I told him the story  
14 what happened.

15 Q What did he say?

16 A He said he would handle it, "But as of right now, please  
17 leave him alone," and I said, "No problem."

18 Q What happened next in this dispute?

19 A In the dispute? Nothing. Ronnie called me up a couple  
20 weeks later. Well, he came to my house basically, really. He  
21 came to my house one night, he came out to Staten Island, and  
22 he told me the kid agreed to pay the money, but he's going to  
23 pay it in -- pay 50 one time and a couple weeks later give us  
24 the other 50.

25 Q 50,000?

Russo - Direct / Lifshitz

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1 A 50,000, yes, sorry.

2 Q Did that person pay the money?

3 A Yes, he did.

4 Q What happened to the money?

5 A We split it up.

6 Q Who split it up?

7 A Me, BF, Bobby.

8 Q Do you remember who got what amount?

9 A Yeah. Bobby got most of it and we were supposed to whack  
10 up the 50,000, me, Bobby and BF.

11 Q What did you take?

12 A Excuse me?

13 Q What did you take?

14 A Well, the first 50 we got on the way home I took 5,000  
15 and left, and Bobby and BF, I don't know where they went, but  
16 I got a phone call later on that they --

17 Q From who?

18 A From BF.

19 Q What happened?

20 A Telling me that Allie wanted to see me.

21 Q Did you go see Allie?

22 A Yes.

23 Q What happened when you saw Allie?

24 A He was upset that I took \$5,000.

25 Q Did he explain to you why he was upset?

Russo - Direct / Lifshitz

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1 A Yes. He said I shouldn't have took anything until he  
2 told me I could take it.

3 Q What was your response to that?

4 A I gave the 5,000 back. I told him, "Here, take it."

5 Q What happened next with the money?

6 A He said, "I don't want it." He says, "I'm just telling  
7 you this is how it works. You don't take nothing unless I  
8 tell you you could take it." And he said something to the  
9 effect about my mortgage, "You're two months behind, what's  
10 another day?"

11 Q Were you, in fact, behind on your mortgage?

12 A Yes, I was.

13 Q What, if anything, did he tell you to do with the \$5,000?

14 A Well, we were going to give him something. He said he  
15 didn't want it. He said, "You know what, you owe my brother  
16 money. Give it to him."

17 Q And who did you understand him to be referring to when he  
18 said his brother?

19 A Michael.

20 Q Did you, in fact, owe Michael Persico money at that time?

21 A Yes, I did.

22 Q For what?

23 A Loansharking.

24 Q What happened to you in 2000?

25 A I was arrested.

*Russo - Direct / Lifshitz*

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- 1 Q With who?
- 2 A With BF.
- 3 Q For what?
- 4 A A RICO charge.
- 5 Q Federal case or state case?
- 6 A Federal.
- 7 Q In what district?
- 8 A Southern.
- 9 Q How did the case get resolved?
- 10 A I pled out.
- 11 Q What was your sentence?
- 12 A 96 months, I believe.
- 13 Q Before you served that sentence, were you ever out on  
14 bail?
- 15 A Yes.
- 16 Q Who, if anyone, did you talk to about money while you  
17 were out on bail?
- 18 A Well, when I was out on bail, I had a meeting with  
19 Michael about money.
- 20 Q What did you say to each other?
- 21 A Nothing. He called me up, he wanted to make sure I was  
22 all right and if I had anything to look after for -- if he  
23 needed anything take care of, he would handle it, and  
24 basically we talked about the money I owed him.
- 25 Q How much money did you owe him at that point?

Russo - Direct / Lifshitz

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1 A I really don't remember. It's 60, 70.

2 Q Sixty, 70,000?

3 A Seventy, maybe a little more. I don't remember exactly.

4 Q You're talking about thousands of dollars?

5 A Yes.

6 Q What, if anything, did Michael say about that money?

7 A Well, he told me to forget about the money I owed him.

8 Q What's your understanding of why he said to forget about  
9 it?

10 A Well, I believed he was doing it because he knew that I  
11 was part of the murder and that he was trying to make me feel  
12 like, you know, I'm doing right thing for you, you do the  
13 right thing for me, keep your mouth shut.

14 Q When you served your sentence in that case, did you have  
15 a commissary account?

16 A Yes, I did.

17 Q What's a commissary account?

18 A It's an account so you could go to the store and buy some  
19 cosmetics and snacks for you to have when you're in prison.

20 Q Were you able to put money in it at first?

21 A In my account?

22 Q Yes.

23 A When I did the time in 2000?

24 Q Yes.

25 A Yes, I was putting my own money in there.

*Russo - Direct / Lifshitz*

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1 Q Did that change?

2 A After a few years, yeah.

3 Q What changed?

4 A I couldn't afford to put money in my account anymore.

5 Q So what did you do?

6 A I wrote a letter to a friend of mine.

7 Q Who?

8 A Scotty.

9 Q Who's Scotty?

10 A Scotty Reback.

11 Q What's his position, if any, in organized crime?

12 A Associate.

13 Q Of what?

14 A Colombos.

15 Q What do you recall saying to him in your letter?

16 A I don't remember exactly. I said that I just need help  
17 with money, I have no money.

18 Q What happened next?

19 A He reached out to my girlfriend, my ex-girlfriend, and he  
20 told her to come by once a month and he'd give her 250, \$300 a  
21 month.

22 At that time, I only had about two years left on my  
23 bid anyway, but he gave my girl some money every month.

24 Q Did the money get deposited in your commissary account?

25 A Yes, it did.

Russo - Direct / Lifshitz

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1 Q When you were released, who, if anyone, did you talk to  
2 about that money?

3 A On my release, down the road I talked to Scotty about it.  
4 I thanked him for it.

5 Q I'm sorry?

6 A I said I thanked Scotty for it when I got home.

7 Q Did you discuss it with anyone else?

8 A No, not really, no.

9 Q Did you learn where the money came from?

10 A Yeah, through Scotty.

11 Q What did he say?

12 A He said through the vending machines. He told me, "Thank  
13 Michael 'cause that vending machine, whatever I get out of it  
14 I send to you and sometimes to BF."

15 Q Do you understand what vending machines he was referring  
16 to?

17 A Yeah, the vending machines in his store.

18 Q Whose store?

19 A Scotty's.

20 Q What kind of store does Scotty have?

21 A It's a dealership, car dealership.

22 Q After your 2000 arrest in the federal case, in what year  
23 were you released?

24 A From the feds?

25 Q Yes.

Russo - Direct / Lifshitz

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1 A 2007.

2 Q Were you allowed to live at home?

3 A In the beginning, no.

4 Q Where did you live?

5 A I was in a halfway house.

6 Q At that time in 2007, did you get any legitimate work?

7 A Yes.

8 Q What kind of work?

9 A I was working for a moving company.

10 Q Were you actually going to that job?

11 A Yes.

12 Q Were you on supervised release at that time?

13 A Yes.

14 Q What were some of the conditions you recall?

15 A Same thing as -- no hanging out with known felons, no  
16 possessing firearms, no -- no getting in trouble basically.

17 Q Did you violate those conditions?

18 A Every one of them, yes.

19 Q When you were in the halfway house, who, if anyone, did  
20 you talk to about getting inducted into the Colombo family?

21 A I talked to -- when I got to the halfway house, I talked  
22 to my friend Carmine and Andre.

23 Q Who was Carmine?

24 A Carmine is Michael's cousin.

25 Q Is his last name Persico also?

Russo - Direct / Lifshitz

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1 A Yes, it is.

2 Q And what was his position in the crime family?

3 A Associate.

4 Q Did you mention Andre also?

5 A Yes.

6 Q What was his position?

7 A He was a made member.

8 Q What, if anything, did Andre say to you about getting  
9 inducted?

10 A He said he got a message recently and to tell me that  
11 Alphonse, "Allie Boy" wanted to have me straightened out, have  
12 me get inducted into the family.

13 Q By the way, I don't know if I asked you this.

14 What was Alphonse Persico's position in the crime  
15 family at this time?

16 A When I was home and he was home, he was the acting boss,  
17 and when I came home 2007, he sent that message down, I  
18 considered him the acting boss still.

19 Q Where was he at that time?

20 A In prison.

21 Q Did you actually get inducted in the year 2007?

22 A No.

23 Q Did someone in the family explain to you why you didn't  
24 get inducted?

25 A Yes, Andre did. Andre came and told me that he was

Russo - Direct / Lifshitz

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1 trying to work it out with Dino.

2 Q Dino who?

3 A I forgot his last name.

4 Q Is it the Dino you testified about earlier?

5 A Yes.

6 Q So what happened?

7 A He said, "Dino said right now Tommy can't do nothing for  
8 you because they got a lot of heat on them and it would be a  
9 bad time."

10 Q Who was Tommy?

11 A Tommy Gioeli.

12 Q What was his position?

13 A He was a street boss.

14 Q What is a street boss?

15 A Street boss acts for the boss of the family. When the  
16 boss is not around, he makes basically the little decisions on  
17 the street, but when it comes to big decisions, he's got to  
18 get permission.

19 Q When did your supervised release end from your 2000 case?

20 A I came home August or September, I don't know, July, some  
21 time mid to late 2007. Eleven months later I was off parole.  
22 Around November 2008.

23 Q That's when your supervised release ended?

24 A Yeah, November, December.

25 Q At that time, who, if anyone, did you talk to about your

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1 possible induction into the Colombo family?

2 A Andre and I had a conversation with Michael.

3 Q What did Michael say to you?

4 A Well, right after I got off parole, he asked to see me.  
5 So I went down to see him, and he was basically telling me,  
6 "You know what's going on, my brother wants to have you  
7 straightened out." I said, "Yes, I know," and I even asked  
8 about BF.

9 Q You asked him about BF?

10 A Yeah. I said, "What about BF?" He said, "Don't worry  
11 about BF right now."

12 Q What advice, if anyone, did Michael Persico give you  
13 about getting inducted?

14 A He was telling me that I got to change my ways and calm  
15 down, walk with a softer stick, speak softer. Basically  
16 telling me how to act.

17 Q At some point after you were released in 2007, did you  
18 own or lease a Nissan automobile?

19 A Yes.

20 Q Did you have any problems with it?

21 A Car was a good car. No problems. I just couldn't afford  
22 it.

23 Q So what did you do?

24 A I talked to a couple friends of mine, told them to -- I  
25 need to get rid of the car 'cause I'm not paying the payments

*Russo - Direct / Lifshitz*

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1 on it no more.

2 Q Did someone do that for you?

3 A Yes.

4 Q Who?

5 A I talked to Ambrose and Roger and they just told me,  
6 Ambrose told me, "Leave the car wherever you're going to park  
7 it. Let me know where it's parked and the next day when you  
8 go there, you'll see the car will be totalled." I said,  
9 "Okay, thank you."

10 Q Did that happen?

11 A Yes.

12 Q Who were Ambrose and Roger?

13 A Ambrose and Roger are associates of the Colombo family.

14 Q After the car was totalled, did that help you?

15 A Well, it didn't help me any, but it helped me pay the  
16 note on the car and get rid of it.

17 Q You got rid of the debt?

18 A Yeah.

19 Q Have you also -- so just to be clear, was that a form of  
20 fraud?

21 A I believe so, yes.

22 Q Were you also involved in any fraud involving physical  
23 injury?

24 A Yeah, my knee.

25 Q What happened?

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1 A I hurt my knee really bad and I needed a surgery and I  
2 didn't have insurance. So, I was talking to a friend of mine  
3 one day. He told me, "You know, just claim that you fell in  
4 front of my house and we'll go through the insurance that way  
5 this way you get your knee fixed."

6 Q Did you claim to insurance that you fell in front of your  
7 friend's house?

8 A Yes, I did.

9 Q Was that true?

10 A No.

11 Q Did you get money for it from insurance?

12 A Yes.

13 Q Did you ever interfere in a criminal case involving a son  
14 of yours?

15 A Yes, yes, yes, yes.

16 Q What was your son accused of doing?

17 A My son Anthony was accused of selling a pound of weed.

18 Q What did you do?

19 A I threatened the kid he was with and his family to tell  
20 him to take the rap for it.

21 Q Was that kid a co-defendant?

22 A Yes, he was.

23 Q In 2007 how did you make money?

24 A I was -- I was working legitimately and I was starting my  
25 business again, the loansharking.

*Russo - Direct / Lifshitz*

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1 Q At that time, who did you get money from to loan shark?

2 A Anthony Stropoli.

3 Q Were you eventually inducted into the Colombo family?

4 A Yes.

5 Q When?

6 A 2009.

7 Q What time of year?

8 A It was beginning of the year.

9 Q After your induction, were you assigned to report to  
10 anyone?

11 A Yes.

12 Q To who?

13 A To "Teddy Boy."

14 Q Teddy Persico, Junior?

15 A Yes.

16 Q What was his position?

17 A At the time, he was a captain.

18 Q Did he have an acting captain for him at that time?

19 A No, but he needed one.

20 Q Did he come to have one?

21 A Yes.

22 Q Who was his -- who became his acting captain?

23 A Anthony Stropoli.

24 Q Was Teddy Persico, Junior in prison at that time?

25 A No.

Russo - Direct / Lifshitz

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1 Q So why did he need the acting captain?

2 A Because they wanted to keep him safe.

3 Q Just to be clear, right after you were inducted, what was  
4 your position in the Colombo family?

5 A I was a made member.

6 Q Did that change? Did you come to assume another  
7 position?

8 A Yeah, down the road, yes.

9 Q What position did you come to hold?

10 A Acting captain for Teddy.

11 Q Around when did you become acting captain for Teddy?

12 A I don't know, 2010 something. I don't remember.

13 Q How did that happen?

14 A Andrew wanted me to take his position from Anthony  
15 Stropoli.

16 Q Andrew who?

17 A Russo.

18 Q Is he related to you?

19 A No.

20 Q What was his position in the crime family?

21 A He was the acting boss.

22 Q Sorry, in 2010 was he the acting boss?

23 A Yes.

24 Q After you became acting captain, who, if anyone, was  
25 around you?

1 A There was a bunch of guys with me: Joey Savarese, Tommy  
2 McLaughlin, "Fat Larry," BF. I can't think of them all.  
3 Roger, Ambrose.

4 Q What was Joe Savarese's position in the crime family?

5 A He was a made member.

6 Q And the other people you mentioned, McLaughlin, "Fat  
7 Larry," BF, Roger and Ambrose, what were their positions?

8 A They were all associates.

9 Q In or around 2009, did you open a legitimate business?

10 A Tried to, yes.

11 Q With who?

12 A With Frankie, BF.

13 Q What business did you open or try to open?

14 A Car detailing products.

15 Q What was it called?

16 A Maximum Car Protection.

17 Q How did you and BF get money to start the business?

18 A Well, Frankie laid out some money that he had and we  
19 borrowed the rest.

20 Q From who?

21 A Well, we asked Michael about it and he -- he shifted it  
22 over to Scotty. He told us go see Scotty, Scotty will help  
23 you out.

24 Q The Michael you mentioned was Michael Persico?

25 A Yes.

*Russo - Direct / Lifshitz*

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1 Q And Scotty was Scotty who?

2 A Scotty Reback.

3 Q Did Scotty give you money?

4 A Yes.

5 Q Did you actually open this business?

6 A Yes, we did.

7 Q Where was it located?

8 A On 11th Avenue and 67th, 68th Street.

9 Q In Brooklyn?

10 A Yes.

11 Q What space was that?

12 A It was a garage.

13 Q Whose garage was it?

14 A It was Michael's garage.

15 Q What had it been used for previously?

16 A It was where he used to keep his limousines.

17 Q How did you get access to that space?

18 A I asked -- we asked Michael if he knew of a spot. I  
19 think Frankie asked him if he knew if he could help us out  
20 with a garage or something. He told us we could use the  
21 garage, but his brother-in-law had stuff in there. So if we  
22 could share the space, it would be good for both of us.

23 MR. SERCARZ: Could we have a time frame?

24 THE COURT: About what year was this?

25 THE WITNESS: 2010, the end of '9, 2009, beginning

1 of '10, around there.

2 MR. SERCARZ: I'm sorry, I didn't hear the answer.

3 THE COURT: 2009 to 2010, beginning of 2010.

4 MR. SERCARZ: Thank you, Your Honor.

5 THE COURT: We need you to keep your voice up a  
6 little bit.

7 THE WITNESS: Thank you.

8 BY MR. LIFSHITZ:

9 Q What else, if anything, did you ask Michael Persico for  
10 at that time?

11 A I have no clue besides asking him about that.

12 Q Well, let me ask a different question.

13 Did you need any additional help starting up your  
14 business?

15 A Yeah, if we wanted -- we wanted to get some -- we wanted  
16 to get the business going. We asked him if we could -- he  
17 could reach -- he could reach out to John Staluppi and Rosatti  
18 so we could get their dealerships and put our products in  
19 them.

20 Q Who were John Staluppi and John Rosatti?

21 A Rosatti and Staluppi are made members of the Colombo  
22 crime family.

23 Q Just to be clear, who did you ask to reach out to those  
24 two guys?

25 A We asked Michael.

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1 Q Aside from being members of the Colombo family, did  
2 Staluppi and Rosatti own legitimate businesses?

3 A Yes, they do.

4 Q What kind?

5 A Car dealerships.

6 Q What did Michael Persico say when you asked him for help  
7 contacting Staluppi and Rosatti?

8 A He said no problem.

9 Q Did you get any business through Staluppi or Rosatti?

10 A Yes, we did.

11 Q Which one or was it both?

12 A Rosatti, we got most of his dealerships on Nostrand  
13 Avenue. Staluppi, we got a couple.

14 Q Were you satisfied with Staluppi's help?

15 A Not me, no.

16 Q So what did you do?

17 A I kept on asking him, you know, and he kept on saying --  
18 I kept on asking Michael and I was telling BF, you know, you  
19 got to keep going there, we got to try to get more of these  
20 dealerships, and I told Michael and he said he would take care  
21 of it, he would go back and talk to them, see if we could get  
22 some more, and basically I didn't want to bother him anymore,  
23 so.

24 Q Bother who?

25 A Michael.

1 Q So what did you do?

2 A 'Cause he was busy doing his own thing.

3 Q So what did you do?

4 A So I met Scotty one day, we were just bullshitting around  
5 and I asked him instead of me going to Michael all the time  
6 and breaking his chops, "Why don't you just do the right  
7 thing, go see your father-in-law and tell him to do the right  
8 thing for us."

9 Q Scotty who?

10 A Scotty Reback.

11 Q Who was Scotty Reback's father-in-law?

12 A John Staluppi.

13 Q So you were asking Reback to go to Staluppi?

14 A Yes.

15 Q What did Scotty Reback say to you?

16 A He says, "All right, I'll see what I can do."

17 Q What happened next?

18 A He went and told Michael.

19 Q How do you know?

20 A And Michael took it as I was going behind his back.

21 Q Who told you that?

22 A Who told me that?

23 Q Yes.

24 A Well, Teddy did.

25 Q Teddy who?

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1 A      Teddy Persico, his cousin.

2 Q      What did Teddy say about that?

3 A      I got a phone call from his brother-in-law Angelo and  
4 told me to come down, meet him down in Greenpoint. They were  
5 at one of the feasts down there.

6 Q      Whose brother-in-law is Angelo?

7 A      Michael's brother-in-law Angelo.

8 Q      What's his last name?

9 A      Spata.

10 Q     So he called you to meet?

11 A     Yes, he told me to come down, he wanted to see me. When  
12 I got down there, Teddy was down there.

13 Q     So, when you went to meet at the feast, who did you see?

14 A     I went to meet him, I met Angelo. We went to a little  
15 restaurant in the back and I didn't know Teddy was there.

16 When I got there "Teddy Boy" was there. Me and BF was there.

17 Q     What happened at the meeting?

18 A     We started talking. Teddy told me, "What did you do?" I  
19 said, "I don't know. I do a lot of things. What did I do?"  
20 And he said, "You went behind my cousin's back and tried to  
21 reach out to Staluppi." And I was like, "How did I do that?"  
22 He says, "You went to Scotty." I said, "Scotty's our friend.  
23 How am I going behind his back by going to Scotty? It's his  
24 father-in-law." And he made a big thing out of it.

25 Q     Who made a big thing out of it?

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1 A      Teddy. He got upset with me, "Don't ever do it again.  
2 The only body reaches out to Staluppi is my cousin Michael."  
3 I said, "Okay."

4 Q      What, if anything, did Spata say at this meeting?  
5 A      Spata. Spata said, I remember right, he said something  
6 about to the effect that, "You know you only listen to my  
7 father-in-law, "Allie Boy," and my cousin Michael -- my  
8 brother-in-law Michael." And I turned around and I said, "I  
9 Listen to "Teddy Boy."

10 Q     You testified about a Colombo family member named Anthony  
11 Stropoli.

12            Do you recall that?

13 A     Excuse me?

14 Q     Do you recall testifying about Anthony Stropoli?

15 A     Yes.

16 Q     Was he a member of the crime family, Colombo crime  
17 family?

18 A     Yes.

19 Q     Did he have a legitimate business?

20 A     Yes.

21 Q     What was it?

22 A     Fish company.

23 Q     What did he sell?

24 A     Fish.

25 Q     To who?

*Russo - Direct / Lifshitz*

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1 A Restaurants, hotels.

2 Q Like a wholesale business?

3 A Wholesale, yes.

4 Q Did you ever try to go into a legitimate business with  
5 Stropoli?

6 A Yes.

7 Q What kind of business?

8 A Valet parking.

9 Q Valet park?

10 A Yes.

11 Q Where did you and Stropoli want to do that?

12 A We were going to try to get something going in New  
13 Jersey.

14 Q Why New Jersey?

15 A Because that's where most of his business was, his  
16 restaurants that he dealt with.

17 Q Who, if anyone, did you and Stropoli go to for advice?

18 A Well, after me and Anthony talked about going into  
19 business doing that, he directed me to a kid named Anthony, I  
20 forgot his last name. He ran a couple of valet parking  
21 systems and so we reached out to him. I went to meet him.

22 Q Where did you understand his valet business was?

23 A Well, I knew he had a company, the kid Anthony had a  
24 couple in Staten Island.

25 Q Did you actually meet Anthony?

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1 A Yeah.

2 Q What happened?

3 A Well, when I got there to meet him, Michael was there.

4 Q Michael who?

5 A Persico.

6 Q And what happened?

7 A Michael asked me what was going on, "I heard you want to  
8 open up a business." I said, "Yeah." And he says, you know,  
9 he was, "Why would you want to go into the valet parking  
10 business?" I said, "'Cause I want to do something legit."

11 MR. SERCARZ: Again may we have a time frame?

12 THE COURT: Yes.

13 About what time did this happen, the years?

14 THE WITNESS: I don't -- it's either 2010.

15 THE COURT: 2010?

16 THE WITNESS: '9, '10, around that.

17 THE COURT: 2009, 2010.

18 BY MR. LIFSHITZ:

19 Q I'm sorry, can you repeat what Michael Persico said to  
20 you?

21 A He said a lot of things I don't remember exactly, but I  
22 know he said to me, 'cause I got upset when he says, "How  
23 about if I open up a -- how would Anthony and you like if I  
24 opened up a -- a fish company?"

25 Q What did you understand that to mean?

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1 A He was being cute. So I turned around and told him, "Go  
2 ahead, open up a fish company."

3 Q What else did Michael Persico say to you?

4 A He said, "Why don't you make your life easier, you know,  
5 just by doing right -- you know, give us the valet -- do the  
6 hotels and the restaurants that you're going to go to. Let us  
7 go there and put our valet there and you guys just sit back  
8 and collect a check. Give you like 20 percent of every  
9 company, you know, every place you give us."

10 Q Did you then go out and try to get business for Anthony  
11 and Michael's valet business?

12 A After I went back and talked to Anthony about it and told  
13 him and Anthony said he didn't want to be bothered and then we  
14 said yeah, we'll just try to get him some business.

15 Q Where did you do that?

16 A Jersey.

17 Q Did you get him any specific business that you recall?

18 A One restaurant, maybe two. I don't remember exactly the  
19 name of the restaurant. It was in Red Bank somewhere.

20 Q What kind of restaurant?

21 A I think it's an Italian restaurant.

22 Q Did you ultimately start your own valet business with  
23 Anthony Stropoli?

24 A No.

25 Q Why not?

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- 1 A Because we didn't want problems, me and Anthony.
- 2 Q What kind of problems?
- 3 A Any kind of problem.
- 4 Q From who?
- 5 A From Michael.
- 6 Q What happened to you in January 2011?
- 7 A I was arrested.
- 8 Q Federal or state case?
- 9 A Federal.
- 10 Q What were the most serious crimes you were charged with?
- 11 A Murder.
- 12 Q Were you charged with a racketeering case?
- 13 A Racketeering act, yeah.
- 14 Q The murder of who?
- 15 A Joey Scopo.
- 16 Q What did you decide to do in your case?
- 17 A Cooperate.
- 18 Q How soon after you were arrested did you decide to  
19 cooperate?
- 20 A Twenty minutes, half-hour.
- 21 Q After you were arrested, were you incarcerated?
- 22 A Yes, I was.
- 23 Q And were you in jail throughout the pendency of your  
24 case?
- 25 A Yes, I was.

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1 Q At times after you began cooperating, did the Government  
2 provide you some commissary money?

3 A Yeah.

4 Q Did you ultimately plead guilty?

5 A Yes, I did.

6 Q What were the most serious crimes you pled guilty to?

7 A Murder, murder conspiracy, gun charge, drugs,  
8 racketeering.

9 Q When you pled guilty, what was the maximum sentence you  
10 faced?

11 A Life.

12 Q Did you sign a cooperation agreement?

13 A Yes, I did.

14 Q What was your understanding of what you had to do under  
15 that agreement?

16 A The agreement that I had to tell the truth, everything,  
17 all the truth, and pray to God that the judge understood.

18 Q And if you fulfilled --

19 A And give me less time than life.

20 Q So, if you fulfilled your obligations, what did you  
21 believe the Government was obligated to do?

22 A They weren't obligated to do anything except give me  
23 that, you know, the okay, the 5K1 letter.

24 Q What is your understanding of what a 5K1 letter is?

25 A It's a cooperating agreement that the judge can look at

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1 and go under the guidelines if I did everything I was supposed  
2 to do by cooperating, telling the truth.

3 Q Were you supposed to pay forfeiture under your agreement?

4 A Yes.

5 Q Have you done that?

6 A No.

7 Q Why not?

8 A 'Cause I don't have the money.

9 Q After you pled guilty, don't tell us where you went, but  
10 were you ever placed in a special kind of facility?

11 A Yes.

12 Q What's that called?

13 A WITSEC.

14 Q And other than in jail, have you been part of any WITSEC  
15 program?

16 A No.

17 Q After you pled guilty in your 2011 case, did you  
18 eventually testify in court?

19 A Yes.

20 Q Was that here in this courthouse?

21 A In this courthouse, yes.

22 Q At whose trial?

23 A Frank Guerra.

24 Q After you testified, were you sentenced?

25 A Yes, I was.

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1 Q When you were sentenced, did the Government provide the  
2 judge a 5K letter?

3 A Yes, they did.

4 Q Do you recall when you were sentenced?

5 A October 16th.

6 Q Of what year?

7 A 2013.

8 Q And what was your sentence?

9 A Time served.

10 Q So about how much time did you serve in total?

11 A I served 33, 34 months.

12 Q Without telling us where you lived, after you were  
13 released, did the Government provide you some help with moving  
14 expenses?

15 A Yeah, they moved my family, yeah.

16 Q And why are you testifying here today?

17 A Under the agreement, I have to testify.

18 MR. LIFSHITZ: No further questions, Your Honor.

19 THE COURT: So, sir, I'm going to direct you that  
20 since we are going to continue this hearing on a different day  
21 that you cannot discuss your testimony any further with the  
22 Government. You certainly will be able to discuss scheduling,  
23 but that's about it, okay, not your testimony. And I'm sure  
24 the Government will let you know when we're going to need you  
25 back here in court to continue the testimony.

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1           So, you're excused.

2           THE WITNESS: Thank you.

3           (The witness leaves the witness stand.)

4           THE COURT: Did the parties have an opportunity to  
5 discuss scheduling?

6           I know it's so hard to kill the impulse to stand,  
7 but if you'll just bear with me, it's the marble. It's  
8 something about the acoustics of the room, it's hard for us to  
9 hear you and hard for the audience to hear if you're not  
10 seated and speaking into the microphone. I kind of do miss  
11 that old habit of standing up, the old protocols, but I'd  
12 rather have a clear record.

13           MR. SERCARZ: I miss it too. It's good for my  
14 joints.

15           THE COURT: Yes, I can relate to that, absolutely.

16           MR. SERCARZ: Your Honor, would the 24th work?  
17 We've discussed it. It's a day when all the attorneys seem to  
18 be free of conflicts.

19           THE COURT: And I do have the whole day available  
20 right now so that we can go to the end.

21           If the parties would like, I would imagine that,  
22 since the Government took all morning to present its case,  
23 that it's only fair to assume that the defense might go equal  
24 time. Plus there might be redirect and recross. If you like,  
25 I can just reserve time on the following day, August 25th,

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1 which is a Thursday. If the parties want to just block off  
2 some time in the off chance that we need some spillover time,  
3 because otherwise I can't guarantee that the days won't get  
4 full.

5 MR. SERCARZ: I think that we should do that.

6 MS. KEDIA: I think that makes sense, Judge.

7 THE COURT: Is that good for the Government as well?

8 MR. LIFSHITZ: Yes, Your Honor.

9 THE COURT: All right. So, for the 24th we'll start  
10 at 10 o'clock and continue the hearing. Then on the 25th I do  
11 have one matter in the morning, but it's not going to be very  
12 long. We can start at 11 o'clock and I can leave the rest of  
13 the day clear for this case so that we can finish up.

14 MR. SERCARZ: Thank you, Your Honor.

15 THE COURT: If we don't need it, we don't need it,  
16 but I'd rather reserve it now just because I know not only my  
17 schedule, but I know you're all busy attorneys and I'm sure  
18 your schedules get pretty busy as well.

19 All right. Thank you all very much.

20 (Time noted: 12:57 p.m.)

21 (Proceedings were adjourned to August 24, 2016, at  
22 10:00 a.m.)

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2                   WITNESS                   PAGE

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4                   ANTHONY RUSSO

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DIRECT EXAMINATION

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BY MR. LIFSHITZ

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1                   E X H I B I T S

2                   Government's Exhibit 156                   21

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4                   Government's Exhibit 152B                   25

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6                   Government's Exhibit 155                   26

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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK  
3 -----x

10-CR-147 (DLI)

UNITED STATES OF AMERICA,

United States Courthouse  
Brooklyn, New York

Plaintiff,

-against-

August 24, 2016  
10:00 a.m.

MICHAEL PERSICO,

Defendant.

-----x  
TRANSCRIPT OF CRIMINAL CAUSE FOR FATICO HEARING  
BEFORE THE HONORABLE DORA L. IRIZARRY  
UNITED STATES CHIEF DISTRICT JUDGE

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Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

## Proceedings

1 (In open court.)

2 THE COURT: Please be seated.

3 THE COURTROOM DEPUTY: Criminal cause for continued  
4 Fatico hearing, Docket Number 10-CR-147, United States versus  
5 Michael Persico.

6 Please state your appearances.

7 MR. LIFSHITZ: Allon Lifshitz for the United States,  
8 and I'm joined at counsel table by FBI Special agent Chance  
9 Adam, and a paralegal from our office named Olivia Lemons.

10 Good morning, Your Honor.

11 THE COURT: Good morning to all of you.

12 For defendant.

13 MR. FERNICH: Good Morning, Your Honor, Marc Fernich  
14 from Mr. Persico.

15 THE COURT: Good Morning.

16 MR. SERCARZ: Maurice Sercarz, S-E-R-C-A-R-Z.

17 THE COURT: Good morning.

18 MS. KEDIA: Good morning, Your Honor, Sarita Kedia  
19 for Mr. Persico.

20 THE COURT: Good morning.

21 Good morning, Mr. Persico.

22 THE DEFENDANT: Good morning.

23 THE COURT: All right, so this is continuation of a  
24 Fatico hearing. The Government's first witness, Anthony  
25 Russo, the direct was completed of Mr. Russo, so we're on for

## Proceedings

1 cross-examination, and I gather your witness is here.

2 MR. LIFSHITZ: Yes, he is, Your Honor. We can go  
3 get him, if the Court is ready.

4 THE COURT: So there were a number of letters that  
5 were filed at the very last minute yesterday afternoon. I  
6 will address those after we get done with the witness today,  
7 okay. And let's move forward with the testimony.

8 So if you want to get set up while we bring in the  
9 witness. Thank you.

10 (Witness resumes the stand.)

11 ANTHONY RUSSO, called as a witness, by the Government, having  
12 been previously first duly sworn/affirmed, was examined and  
13 testified further as follows:

14 THE COURT: Good morning, sir. If you could just  
15 tell your name again for the record.

16 THE WITNESS: Anthony Russo.

17 THE COURT: Thank you. Good morning. And I'm going  
18 to remind you that you are still under oath.

19 Again, this is cross-examination by defense counsel.

20 Ms. Kedia, are you conducting the cross?

21 MS. KEDIA: I am, Your Honor.

22 THE COURT: Okay. You may proceed whenever you're  
23 ready.

24 CROSS-EXAMINATION

Russo - Cross - Kedia

1 BY MS. KEDIA:

2 Q Mr. Russo, good morning.

3 A Good morning.

4 Q So you testified here a couple of weeks ago on direct  
5 examination; you recall that.

6 A Yes.

7 Q And before your direct examination, Mr. Russo, did you  
8 meet with the government to prepare for your testimony?

9 A Yes, I did.

10 Q How often did you meet with them?

11 A Before last week?

12 Q Yes.

13 A One time.

14 Q And did you speak to them on the phone?

15 A Not that I remember, no.

16 Q And you prepared for your testimony at -- there was going  
17 to be a hearing at a prior occasion, right; you remember that?

18 A Yes.

19 Q And you prepared at that time as well?

20 A Went over certain things, yes.

21 Q You went over certain things with the government about  
22 what you were going to say on the witness stand?

23 A Not what I was going to say. What I testified against.

24 Q What you were testifying to?

25 A Yes.

Russo - Cross - Kedia

1 Q And before you testified at Frank Guerra's trial, you  
2 went over your testimony repeatedly with the government; is  
3 that right?

4 A A few times, yes.

5 Q You met with them 15 to 20 times; is that right?

6 A I don't remember that number.

7 Q You don't remember that?

8 A Twenty times you're telling me? I don't remember how  
9 many times. It was quite a few.

10 Q It was quite a few.

11 A Yes.

12 Q You don't remember --

13 THE COURT: Okay, enough. All right, this is a  
14 hearing. So asked and answered. You get one shot at asking  
15 your question.

16 MS. KEDIA: Yes, Your Honor.

17 THE COURT: There's no jury here. Move it.

18 Q Mr. Russo, you testified about a number of crimes you  
19 committed since you were 15 or 16 years old, right?

20 A Yes.

21 Q You stole cars and trucks?

22 A Yes.

23 Q You carried guns?

24 A Yes.

25 THE COURT: Are you asking a question or making a

Russo - Cross - Kedia

1 statement?

2 MS. KEDIA: I'm asking a question.

3 THE COURT: That's not a question, you're making a  
4 statement. Ask the question. At least make some attempt at  
5 putting it in a question form, at the very least. You're  
6 given some leeway on cross to ask leading questions, but at  
7 least put it in a question. You want to testify, get on the  
8 stand.

9 BY MS. KEDIA:

10 Q Mr. Russo, what kind of guns did you carry?

11 A Handguns.

12 Q What kind of handguns specifically, if you recall?

13 A .38 special. .38-caliber. .25-automatic.

14 Q A number -- you carried a number of different types --

15 A I got arrested with a .32-automatic in my hands -- my  
16 pants, yes.

17 Q I'm sorry?

18 A Quite a few different guns.

19 Q And from the time you were 15 or 16 years old, did you  
20 consider yourself to be associated with the Gambino family?

21 A Yes.

22 Q And were you around a guy, associating with a guy by the  
23 name of Frankie Martin?

24 A Yes.

25 Q And did you commit crimes with Mr. Martin?

Russo - Cross - Kedia

1 A No, I did not.

2 Q You didn't commit any crimes?

3 A No, I did not; no.

4 Q Did you start shylocking with Frankie Martin?

5 A No, with Perkie.

6 THE COURT: Perkie? Who's Perkie?

7 A He was just a guy around Frankie. He used to give me the  
8 money so I could shylock.

9 Q So someone around --

10 A Frankie.

11 Q -- Frankie, this Gambino guy --

12 A Yes.

13 Q -- you were shylocking with this other person?

14 A Yes.

15 Q Okay. And when I say "shylocking," do you understand  
16 that to be lending out money to people for --

17 A I understand that.

18 Q Now, you spoke about a guy, a kid whose jaw you broke.

19 Do you remember that?

20 A Okay.

21 Q Is that right?

22 A Yeah.

23 Q You testified about that on direct examination?

24 A Yes, I did.

25 Q And you said that you broke his father's head open as

Russo - Cross - Kedia

1 well?

2 A No, he just asked me if I broke his jaw, yes. Yes, I  
3 did.

4 Q Did you break his father's head open as well?

5 A Yes, I did.

6 Q And was this over a drug debt?

7 A Yes.

8 Q And do you remember that it was a 50-dollar drug debt?

9 A It wasn't \$50.

10 Q It wasn't or you don't remember?

11 A I don't believe it was, no.

12 Q Let me show you, if I may --

13 A Show me whatever you want.

14 THE COURT: Wait for a question to be asked, okay?

15 THE WITNESS: Thank you, yes. No problem.

16 Q Let me show you, if I may, 3500AR2A.

17 Your Honor, may I approach?

18 THE COURT: What is that, please, for the record.

19 MS. KEDIA: 3500AR2A, it's a New York City  
20 Department of Probation document, Your Honor.

21 Q And I'll refer you to page 2.

22 Your Honor, may I question the witness from here?

23 THE COURT: No, go up there.

24 You're asking him if this refreshes his  
25 recollection, correct?

Russo - Cross - Kedia

1 MS. KEDIA: Yes, Your Honor.

2 THE COURT: Just take a look at it, let us know when  
3 you're done looking at it, okay?

4 THE WITNESS: Yes. Okay.

5 Q Mr. Russo, does that refresh your recollection that it  
6 was a 50-dollar drug debt?

7 A No.

8 MR. LIFSHITZ: Your Honor, the document appears to  
9 contain information provided by the plaintiff, not by the  
10 witness. It speaks for itself.

11 THE COURT: This isn't a document that was prepared  
12 by this witness, this was prepared presumably by a probation  
13 officer.

14 Q Mr. Russo, do you recall the father, the kid's father,  
15 had already repaid the debt before you broke his head open?

16 A Yes, he did pay me.

17 Q And you still broke his head open.

18 A Well, he came at me first, so.

19 He's the one that started the problem. He swung a  
20 carjack at me.

21 Q The father swung a carjack at you?

22 A Yes, he swung a carjack at me.

23 THE COURT: Okay, two people cannot talk at the same  
24 time because the reporter cannot take down everything.

25 So, ma'am, you need to wait until he finishes his

Russo - Cross - Kedia

1 answer; and you need to wait, sir, until the attorney finishes  
2 her question, okay?

3 THE WITNESS: Okay.

4 BY MS. KEDIA:

5 Q Now, Mr. Russo, you have been committing crimes your  
6 entire life; is that fair to say?

7 THE COURT: Asked and answered.

8 Q You were -- you committed murder; is that right?

9 A Yes.

10 Q Attempted murder on a number of occasions?

11 A Yes.

12 Q Various home invasions and brutal assaults; is that  
13 right?

14 A Home invasions?

15 Q Yes.

16 A Yes, I did.

17 Q Brutal assaults?

18 A Brutal? Assaults.

19 You want to call them brutal, you can call them  
20 whatever you want.

21 Q Mr. Russo, when you were arrested in 2011, did the  
22 government seek to detain you?

23 Do you recall that?

24 A Yes.

25 Q And did you see the government's detention memo at that

Russo - Cross - Kedia

1 time?

2 A I don't remember.

3 Q Are you aware that they had you on recordings stating  
4 that you were carrying pistols, that you were threatening to  
5 hit someone in the head with a pipe, that you were saying you  
6 wanted to chop the head of a rat? Isn't that right?

7 MR. LIFSHITZ: Objection to form.

8 THE COURT: Sustained.

9 You know, I realize that the rules of evidence are  
10 relaxed, but this isn't a free for all.

11 MS. KEDIA: Yes, Your Honor. I'll ask the questions  
12 one at a time. Sorry, I was trying to speed it up.

13 THE COURT: Well not only that, you're reading from  
14 a document that is not in evidence as well.

15 MS. KEDIA: I understand. I'm asking the witness --

16 THE COURT: I understand and I'm telling you about  
17 what rules to follow.

18 MS. KEDIA: Yes, Your Honor.

19 THE COURT: Thank you.

20 MS. KEDIA: I will try.

21 THE COURT: Thank you.

22 Q Mr. Russo, do you recall that the government had you on  
23 recording stating that you were carrying a pistol?

24 A When I was at my detention hearing?

25 Q Yes.

Russo - Cross - Kedia

1 A I didn't know about that, no.

2 Q When did you learn about the government's recording?

3 THE COURT: Assuming a fact not in evidence.

4 Q Did you learn, did you come to learn that there were  
5 recordings of you talking about committing a number of crimes?

6 A Yes.

7 Q When did you learn that?

8 A When I met my lawyer.

9 Q And when was that?

10 A Couple of days after I was arrested.

11 Q And what did you learn specifically about that?

12 A Specifically? That I was on tape talking about a lot of  
13 things, yes.

14 Q And did you learn that -- who you were on tape with?

15 A Yes.

16 Q And who was that?

17 A Bunch of guys.

18 Q Did you learn who recorded you?

19 A Yes, I did.

20 Q Who recorded you?

21 A Tommy McLaughlin.

22 Q Did you learn that Peter Tagliavia also recorded you?

23 A Yes, I did.

24 Q Who is Tommy McLaughlin?

25 A Tommy McLaughlin was an associate of ours.

Russo - Cross - Kedia

1 Q Someone you spent a lot of time with; is that right?

2 A Yes, I did. Yes.

3 THE COURT: I'm sorry, when you say "of ours," who  
4 do you mean?

5 THE WITNESS: He was around the family. He's an  
6 associate of the family.

7 THE COURT: Colombo family?

8 THE WITNESS: Yes.

9 Q And, Mr. Russo, and he was specifically an associate of  
10 yours; is that right?

11 A Yes.

12 Q He's someone who answered to you; is that right?

13 A Yes, I guess you could say that.

14 Q And Peter Tagliavia, who is he?

15 A He's an associate of mine.

16 Q He's also someone you spent a lot of time with?

17 A Not as much as Tommy but, yeah.

18 Q And you learned that he made a number of recordings of  
19 you as well?

20 A Yes.

21 Q Now, you were surprised, certainly, to learn that these  
22 guys had been recording you; is that right?

23 A A hundred percent.

24 Q You had committed a lot of crimes with these guys; isn't  
25 that right?

Russo - Cross - Kedia

1 A Not really.

2 Q You hadn't been committing crimes --

3 A I committed crimes but not what you're saying.

4 Q Well, explain what kind of crimes you committed.

5 A We talked --

6 Q With these two individuals?

7 We'll talk about McLaughlin and Tagliavia.

8 A Well, they would do pushing money for me, shylocking  
9 money for me.

10 Q Did go out and assault people with them?

11 A You act like I was assaulting people every day, the way  
12 you say it.

13 THE COURT: Stop.

14 Okay, instead of being argumentative, just answer  
15 the question, okay? Answer the question, to the best of your  
16 ability.

17 Q Mr. Russo, did you go out and assault people with them?

18 A Yes, I did.

19 Q Now, at some point after you were arrested and learned  
20 about these recordings and these individuals having taped you,  
21 you began cooperating with the government; is that right?

22 A Yes, I did.

23 Q And after you began cooperating, you entered into a  
24 cooperation agreement and took a guilty plea, right?

25 A Yes.

Russo - Cross - Kedia

1 Q And you were in prison at the time; is that right?

2 A Yes.

3 Q And you were told that you were going to testify at a  
4 trial; is that right?

5 A Yes.

6 Q And the three individuals what you were going to testify  
7 against were Frank Guerra, Theodore Persico, Jr., and Michael  
8 Persico? Did you understand that to be the case?

9 A Yes.

10 Q And as it turned out, it was Frank Guerra at the trial?

11 A Yes.

12 Q Not Theodore Persico, Jr. or Michael Persico; is that  
13 right?

14 A No.

15 Q Now, before you testified at that trial, you gave the  
16 government, you wrote the government a letter, a sort of wish  
17 list about what Anthony Russo would like from the government;  
18 is that right?

19 A I don't remember that wish list.

20 Q Let me show you what's been marked as 3500AR56.

21 Take a look at that.

22 THE COURT: Just take a look at that and let us know  
23 if that refreshes your recollection as you're done reading it.

24 (Witness reviewing document.)

25 A I remember this, yes.

Russo - Cross - Kedia

1 Q Is that the document that you wrote, Mr. Russo?

2 A Yes.

3 Q And in that document -- that document are questions that  
4 you wrote to the government?

5 A No, these are the questions I wrote to myself.

6 Q But to ask the government?

7 A Yeah. Concerns that I had.

8 Q Concerns that you had?

9 A Yeah. Yes.

10 Q And one of your concerns was you wanted to express to the  
11 government how hard it was in jail; is that right?

12 A How hard it was on me and my family, yes.

13 Q And you wanted make sure you that you weren't taken out  
14 of the location that you were in until it was time to testify  
15 at trial; is that right?

16 A Yes, I think so, I'm not sure.

17 Q Is that right, Mr. Russo?

18 A Ask me that again, please.

19 Q You wanted to ensure that when you finished testifying  
20 that you were returned back to Florida as soon as possible; is  
21 that right?

22 A Yes.

23 Q Now, one of your other concerns is what the scope of your  
24 cooperation was, right?

25 A Yes.

Russo - Cross - Kedia

1 Q And whether the government would still be needing you  
2 after you testified?

3 A Yes.

4 Q And what were you told, Mr. Russo?

5 A They told me you'll have to testify 'til you're off  
6 parole.

7 Q Until you're off of parole, meaning your supervised  
8 release?

9 A Right.

10 Q And so as long as you're on supervised release, you're  
11 obligated to do --

12 A I'm obligated under my 5K1 --

13 THE COURT: Stop. Stop. Stop. You can't talk over  
14 each other. Please let Ms. Sarita finish.

15 THE WITNESS: Sorry about that.

16 THE COURT: Ms. Kedia, I'm sorry. Finish the  
17 question and then you can answer.

18 Can you finish the question, please.

19 MS. KEDIA: Yes, Your Honor.

20 Q When you say, Mr. Russo, when you're off parole, you're  
21 referring to you were placed on supervised release; is that  
22 right?

23 A Yes.

24 Q For a number of years?

25 A Yes.

Russo - Cross - Kedia

1 Q And the judge specifically made it a condition of your  
2 supervised release, the government asked the judge to make it  
3 a condition of your supervised release that you be required to  
4 continue cooperating with them, right?

5 A I believe so, yes.

6 Q And, in fact, your cooperation agreement requires you to  
7 continue cooperating with the government; is that right?

8 A Yes, I believe so; yes.

9 Q And you understand that if you violate your cooperation  
10 agreement or your supervised release, that you can serve a  
11 long prison term; is that right?

12 A Yes.

13 Q Now, Mr. Russo, it's fair to say that you've been  
14 dishonest your entire life; is that right?

15 A No, that's not fair to say.

16 Q Well, you've been committing crimes since you were 15 or  
17 16; is that right?

18 THE COURT: Asked and answered.

19 Q Would you say it's easy for you to lie, Mr. Russo?

20 A No, it's not easy.

21 Have I lied? Yes.

22 Q You told a lot of lies; is that right?

23 A I don't know what a lot is.

24 Have I lied? Yes.

25 Q Well, do you recall, Mr. Russo, at Frank Guerra's trial

Russo - Cross - Kedia

1 being asked this question and giving this answer. AR53  
2 page 481 and 482, Your Honor.

3 "Q Now, would it be fair to say, Mr. Russo,  
4 that you've been telling lies virtually of day of your  
5 entire life?

6 "A I told a lot of lies, yes."

7 Do you recall that?

8 A I don't remember that. If you say so. I don't remember  
9 exactly what I said.

10 MS. KEDIA: I offer that portion of --

11 THE COURT: Excuse me?

12 MS. KEDIA: I offer that portion Mr. Russo's  
13 testimony.

14 THE COURT: It's not an inconsistent statement to  
15 the testimony that he just gave. Move on.

16 Q Mr. Russo, your entire life you've been lying whenever  
17 you needed to lie; is that right?

18 A I've lied and told the truth when I needed to, yes.

19 Q Well, you've had parole hearings and you've had to report  
20 to probation officers on any number of times over the last 25  
21 years; is that right?

22 A I don't understand your question.

23 Q You were first arrested in 1986; is that right?

24 A Yes.

25 Q And you were last arrested in 2011; is that right?

Russo - Cross - Kedia

1 A Yes.

2 Q And between that time you had been in courtrooms; is that  
3 right?

4 A Yes.

5 Q You've been in front of judges; is that right?

6 A Yes.

7 Q You have met with parole officers and probation officers;  
8 is that right?

9 A Yes.

10 Q You've been violating your conditions of release  
11 throughout that entire time period; is that right?

12 A Yes.

13 Q And you certainly haven't reported that to your probation  
14 officers, right, or your parole officers?

15 A That I was committing crimes?

16 Q Yes.

17 A No.

18 Q In fact, every time a parole officer discussed with you  
19 what it was that Anthony Russo was doing during this period of  
20 time, you certainly did not admit that you were committing  
21 crimes; is that right?

22 A They never asked me if I was -- I never lied to them  
23 because when you don't tell them everything, it's not a lie.

24 They just asked me how I'm doing on the street. Am  
25 I working. That's it. So I never lied to them.

Russo - Cross - Kedia

1 Q You never lied to them.

2 A Never told them anything. Never asked.

3 Q So this entire time, from 1986 to 2011, you were never  
4 questioned by a parole officer or a probation officer --

5 A If I was -- sorry if I was --

6 Q -- about whether you were following the law or committing  
7 crimes?

8 A No.

9 Q Mr. Russo, do you recall having a parole hearing on  
10 October 29th, 2000 -- I'm sorry October 29th, 1993?

11 A I don't remember, no.

12 Q Let me show you what's been marked as AR3.

13 You can look at the whole document, but I refer you  
14 specifically to page 4 of that document.

15 THE COURT: It would be helpful for the record  
16 to indicate what this is.

17 MS. KEDIA: Yes, Your Honor.

18 May I see the front page, I will tell you the title  
19 of this document, AR3.

20 It's inmate status report for parole board  
21 appearance.

22 Q Mr. Russo, do you recall having a parole hearing on  
23 October 29th, 1993?

24 A Yes.

25 Q And do you recall that that's nine days after Joseph

Russo - Cross - Kedia

1 Scopo's murder?

2 A Yes.

3 Q Now, when you were interviewed by your parole officer of  
4 that parole board, did you tell them that you had just  
5 committed a murder?

6 A Why would I do that?

7 THE COURT: Please don't argue with the attorney.

8 Either yes or no.

9 A No.

10 Q Did you tell them about any of the crimes that you had  
11 been committing since you got out of jail?

12 A No, I did not.

13 Q Now, Mr. Russo, you want the judge to believe that you're  
14 a changed person now, right?

15 A I am a changed person.

16 Q But do you recall telling Tommy McLaughlin, your friend  
17 and associate, that you don't change, you just get older?

18 A I don't remember that.

19 Q Mr. Russo, if I could have you here --

20 THE COURT: You don't even have a time frame. Can  
21 we have a time frame?

22 MS. KEDIA: Yes, Your Honor, I apologize.

23 Before I let you hear anything me ask you this:

24 Q Tommy McLaughlin is somebody that you were associating  
25 with between mid-2009 until you got arrested in January of

Russo - Cross - Kedia

1 2011; is that right?

2 A Yes.

3 Q And do you remember saying to Mr. McLaughlin, on  
4 August 8th of 2009:

5 I'm Anthony Russo, I don't change, I just get older.

6 A I don't remember that.

7 (Audio recording played.)

8 THE COURT: In the first place, okay, how about an  
9 exhibit number telling me what this is? This is not in  
10 evidence.

11 MS. KEDIA: I understand, Your Honor, I'm just  
12 setting it up. I just wanted to make sure we have the audio  
13 prepared.

14 Q Mr. Russo, I'm going to play you a clip of a recording  
15 made by Mr. McLaughlin on August 8th, 2009 and see if that  
16 refreshes your recollection as to what you told him,  
17 Mr. McLaughlin?

18 THE COURT: Is there any objection by the government  
19 to this?

20 MR. LIFSHITZ: Your Honor, we share the Court's  
21 interest in having a marked exhibit of this so that we can...

22 THE COURT: You know, what did I just say? You had  
23 better have these things marked.

24 MS. KEDIA: Yes, Your Honor.

25 THE COURT: And do you have transcripts of this?

Russo - Cross - Kedia

1 MS. KEDIA: I don't have a transcript of this  
2 particular portion.

3 THE COURT: Well, I expect that you're going to have  
4 to produce transcripts of any audio recordings.

5 MS. KEDIA: Yes, Your Honor.

6 THE COURT: You had plenty of time to prepare for  
7 this hearing. You've got three attorneys on this -- four  
8 attorneys on this case. This should have been done in  
9 advance. Give me an exhibit number and I want a date and a  
10 time of the conversation.

11 MS. KEDIA: Yes, Your Honor.

12 THE COURT: Okay, this is not a free for all. We  
13 have to have some structure here so that there is a record.

14 MS. KEDIA: Yes, Your Honor.

15 I intend to provide all of the clips --

16 THE COURT: Do it now. Do it now.

17 MS. KEDIA: Yes, Your Honor.

18 THE COURT: Exhibit Number.

19 MS. KEDIA: I will mark it as Defendant's A.

20 THE COURT: And?

21 MS. KEDIA: It's a recording by Mr. McLaughlin,  
22 between Mr. McLaughlin and Anthony Russo on August 8th, 2009.

23 THE COURT: Is there any objection to having this in  
24 evidence?

25 MR. LIFSHITZ: No, Your Honor.

Russo - Cross - Kedia

1                   THE COURT: Then let's move it in evidence. It's  
2 fine.

3                   MS. KEDIA: Yes, Your Honor. Thank you. I move --  
4 this clip.

5                   THE COURT: It's done. It's moved in evidence.

6                   (Defense Exhibit A, was received in evidence.)

7                   MS. KEDIA: May we play this recording?

8                   THE COURT: Yes.

9                   (Audio recording played.)

10 Q          Do you remember -- does that refresh your recollection  
11 that you told Mr. McLaughlin --

12                   THE COURT: I could barely make out what was said on  
13 that recording.

14                   Could you make out what was said in that recording?  
15 I could not make out what was said in that recording.

16                   MS. KEDIA: I apologize, Your Honor.

17                   Do we have headphones for the witness?

18                   THE COURT: We do.

19                   You know, what part of preparation in advance is not  
20 understood here?

21                   MS. KEDIA: I apologize, Your Honor, I thought we  
22 tested the system and I thought we could hear it well.

23                   THE COURT: Well, I would like a set of headphones,  
24 too. I don't know if anybody else understood what was said on  
25 there.

Russo - Cross - Kedia

1 MR. LIFSHITZ: Your Honor, am I free to speak?

2 THE COURT: Yes.

3 MR. LIFSHITZ: We don't object to clips being played  
4 for the witness. I assume at the end of this, the Court will  
5 want post-hearing briefing to the extent there's additional  
6 context on these tapes that we feel is appropriate.

7 THE COURT: You have an opportunity to redirect.

8 MR. LIFSHITZ: To redirect, yes, but I don't have  
9 the entirety of every tape they're planning to playing and I  
10 don't know what they're planning to play, so --

11 THE COURT: And that's why it's a problem of not  
12 having an entire transcript in advance.

13 MS. KEDIA: Your Honor, let me explain, if I may.

14 These recordings are hours and hours and hours long  
15 and they are hundreds and hundreds of them and that's why we  
16 took specific clips. This is something that's -- this was a  
17 fashion in which the government played them at the Guerra  
18 trial as well. You know we need to --

19 THE COURT: I was not there for the Guerra trial.

20 MS. KEDIA: I understand, Your Honor, I didn't think  
21 that this would be a problem to do it in this fashion. I  
22 apologize to the Court.

23 THE WITNESS: Your Honor, this wasn't played at the  
24 Guerra trial. I would remember that.

25 THE COURT: The witness says this wasn't played --

Russo - Cross - Kedia

1 MS. KEDIA: Not this particular clip.

2 THE WITNESS: You just said that.

3 THE COURT: Well, you know what, be careful what you  
4 represent to the Court. And in any event, even if you were  
5 planning to do an excerpt, you should have had a transcript of  
6 the excerpt as well as a transcript of the entire  
7 conversation.

8 MS. KEDIA: Yes, Your Honor.

9 THE COURT: I don't abide by sloppiness.

10 MS. KEDIA: And I certainly didn't intend to be  
11 sloppy, Your Honor, I apologize.

12 THE COURT: Play it again.

13 (Audio recording played.)

14 Q Now, Mr. Russo, having heard that does that --

15 THE COURT: First of all, I don't know who was the  
16 speaker.

17 Q Mr. Russo, were those -- was that you and Mr. McLaughlin  
18 speaking to each other?

19 A I couldn't make it out if it was me. It sounded like me.

20 Q It sounded like you?

21 A I'm not a hundred percent sure. I never heard that tape.  
22 Then, again, I didn't hear any of the tapes.

23 Q You didn't hear any of the tapes that Mr. McLaughlin and  
24 Mr. Tagliavia made of you?

25 A No.

Russo - Cross - Kedia

1 Q Mr. Russo, you were sentenced on October 16th of 2013; is  
2 that right?

3 A Yes, I was.

4 Q For all of your crimes, you were sentenced to 33 months  
5 in prison, time served?

6 A Yes, I was.

7 Q And you were ordered to pay \$110,000 in forfeiture,  
8 right?

9 A Yes, I was.

10 Q Now do you have a job?

11 A Yeah, but it's not a steady.

12 Q Have you had a job since you got out of prison in October  
13 of 2013?

14 A Yes.

15 Q And was it the job that you represented to the judge that  
16 was waiting for you when you got out of prison?

17 A No. No.

18 Q What happened to that job?

19 A Never came through.

20 Q Oh, so you represented to a judge that you had a job  
21 waiting for you but you didn't actually have a job waiting?

22 A No, I did but it just didn't pan out.

23 Q Well, what does that mean?

24 A It didn't work out.

25 Q You found another job?

Russo - Cross - Kedia

1 A Yes, I did.

2 Q Do you make money?

3 A Yes, I do.

4 Q The judge ordered you to pay 25 percent of the income  
5 that you earned during towards forfeiture; is that right?

6 A I believe so.

7 Q Have you paid a single dime in forfeiture?

8 A No.

9 Q Do you understand that the judge said that if there was a  
10 failure to pay that you could be violated?

11 A I believe so.

12 Q Have you been violated?

13 A No.

14 Q Do you know if the government has submitted any kind of  
15 violation letter to the judge?

16 A No, not that I know of; no.

17 Q Do you know if anyone has told the judge that you failed  
18 to pay any -- even a single dime towards forfeiture?

19 A Well, I was told only a month ago if I don't start  
20 paying, that my parole officer would put in paperwork.

21 Q Your parole officer told you that?

22 A Yes.

23 Q Did anyone from the government tell you that?

24 A No. Parole officer did tell me, not the government.

25 Q Mr. Russo, you're driving around in a \$75,000

Russo - Cross - Kedia

1       Mercedes-Benz; is that right?

2       A      You're kidding me, right?

3       Q      No.

4                 THE COURT: Please don't argue with the attorney.

5       The answer is either yes or no.

6       A      75,000 Mercedes-Benz?

7       Q      Yes.

8       A      How about \$10,000?

9       Q      Meaning your Mercedes-Benz is worth \$10,000; is that what  
10      that means?

11      A      Yes. It's 12 years old.

12      Q      Where did you get the funds to purchase that vehicle?

13      A      When I sold my house.

14      Q      When you sold your house where?

15      A      In Florida.

16      Q      So you owned a home in Florida?

17      A      No --

18                 MR. LIFSHITZ: Your Honor --

19      A      -- my girlfriend did.

20                 THE COURT: Sustained.

21      Q      Mr. Russo, how much money did you get from the sale of  
22      your house?

23      A      Between 12 and \$15,000.

24      Q      And did you pay any of that towards forfeiture?

25      A      No, because I had to find a new place to live, a car to

Russo - Cross - Kedia

1 get back and forth to work, and by the time that happened, I  
2 was broke.

3 Q Now, Mr. Russo, at the time that you decided to  
4 cooperate, you certainly understood that the government wanted  
5 evidence on Michael Persico; is that right?

6 A No, I didn't understand that; no.

7 Q You didn't understand that?

8 A They didn't come to me tell me I had to give stuff on  
9 Michael.

10 Q Do you recall talking to Thomas McLaughlin on  
11 January 21st of 2010 and explaining to them how you were in  
12 prison with Frank Sparaco in 1999 or 2000 and that the agent  
13 came to him and they told Sparaco that if he could tell them  
14 something about Michael Persico they would have him out of  
15 jail by the weekend?

16 A I don't remember that, no.

17 Q Let me show you what I'm making as Defendant's Exhibit B,  
18 and BT, Your Honor.

19 B, will be the recording, and BT will be the  
20 transcript of the recording.

21 THE COURT: Recording of what?

22 MS. KEDIA: A recording of a conversation between  
23 Anthony Russo and Thomas McLaughlin on January 21st, 2010.

24 If I may hand this up to the Court.

25 THE COURT: Please hand it to my deputy. Don't

Russo - Cross - Kedia

1 approach the bench like that.

2 MS. KEDIA: Sure. No problem.

3 THE COURT: Is there any objection from the  
4 government to introduce this into evidence?

5 MR. LIFSHITZ: Your Honor, again, we don't object to  
6 introducing the portion. If we learn of its context that  
7 matters --

8 THE COURT: Well, you have the opportunity to  
9 introduce anything else that you want to introduce.

10 MR. LIFSHITZ: Thank you, Your Honor.

11 THE COURT: You can't expect not to be open to that.

12 MR. LIFSHITZ: Thank you. Then I will stop saying  
13 that. And I certainly do not object to introducing this  
14 exhibit.

15 THE COURT: Yes, you'll have the right to introduce  
16 any evidence to rebut.

17 Q Mr. Russo, if I could have you listen to this portion of  
18 the recording and look at the transcript while you do, please.

19 A Is that it?

20 Q January 21st, 2010?

21 (Playing audio.)

22 Q Mr. Russo, having heard that recording, does that refresh  
23 your recollection about telling Thomas McLaughlin on  
24 January 21st, of 2010 that Frank Sparaco had discussed with  
25 you that agents came to see him and told him that if you can

Russo - Cross - Kedia

1 get anything out of Russo, or you can tell us about Michael,  
2 we'll have you out of here by the weekend?

3 A Yes.

4 Q And you even told Thomas McLaughlin, in a subsequent  
5 conversation on May 12th, 2010, that agents asked Teddy  
6 Michael Persico, Michael's cousin, to flip; is that right?

7 A That's what I was told by his brother Carmine.

8 Q You were told by Teddy's brother, Carmine?

9 A Carmine Persico, yes.

10 Q That agents asked Teddy to flip against his cousin,  
11 Michael; is that right?

12 A That's what I was told, yes.

13 Q You do recall that?

14 THE COURT: You know, that's at least double hearsay  
15 in connection with, you know, these are not coconspirator  
16 statements.

17 MS. KEDIA: I understand, Your Honor.

18 THE COURT: Stricken. It's stricken.

19 MR. FERNICH: Judge, we would object to that.

20 THE COURT: Your objection is noted for the record  
21 and it's stricken.

22 MR. FERNICH: It's not offered for the truth of the  
23 matter asserted, it's offered for his state of mind and it's  
24 bias and motive, it's non-hearsay.

25 THE COURT: It's stricken. Move on.

Russo - Cross - Kedia

1 Q Mr. Russo, in any event, you understood certainly by the  
2 time you cooperated in 2011, that the agent wanted information  
3 on Michael Persico; is that fair to say?

4 MR. LIFSHITZ: Objection. Asked and answered.

5 THE COURT: I will allow him to answer the question.

6 Was that your understanding?

7 THE WITNESS: Yes.

8 THE COURT: At some point?

9 THE WITNESS: Yes, at some point; yes.

10 Q Now, you were in jail with Teddy Persico, Jr. in the  
11 '80s; is that right?

12 A Yes.

13 Q You spent about -- a little less than a year in jail with  
14 him from mid-1988 to mid-1989; is that right?

15 A Yes.

16 Q And when you got out of jail, that was several years  
17 later, 1992; is that right?

18 A Yes.

19 Q So the three years between 1989 and 1992, you were in a  
20 different jail with this Teddy Persico, Jr.; is that right?

21 A Yes.

22 (Continued on next page.)

23

24

25

RUSSO - CROSS - KEDIA

1 CROSS EXAMINATION

2 BY MS. KEDIA:

3 Q And you got out on August 26, 1992. You got into a  
4 halfway house; is that right?

5 A Yes.

6 Q You began reporting at Edgecombe?

7 A Yes.

8 Q That's a halfway house, Edgecombe?

9 A Work facility, yes. Work release facility, yes.

10 Q And when you say a "work release facility," that means  
11 you went out and worked during the day and then you had to  
12 report back there at night?

13 A Yes.

14 Q Now, you said you met Teddy, Senior, Teddy Persico,  
15 Junior's father, on the same day that you got out of prison;  
16 is that right?

17 A Yes.

18 Q And did you know at that time what Teddy, Senior's  
19 position was in the Colombo family?

20 A Yes.

21 Q How did you know?

22 A I was with Danny and he was telling me.

23 Q When were you with Danny?

24 A That day. Him and Toots.

25 Q Who is Toots?

RUSSO - CROSS - KEDIA

1 A Toots is a friend of ours. He passed away.

2 Q So the day -- when you say that day, you mean the day you  
3 got out of jail?

4 A The day, yes.

5 Q In 1992, in August of 1992?

6 A Yes.

7 Q And when you got out you went to see Danny Persico?

8 A Danny came and picked me up at my house, yes.

9 Q And he told you what his father's position was?

10 A His father wanted to speak to me, yeah.

11 Q Now, you hung out a lot at a candy store on 11th Avenue;  
12 is that right?

13 A Yes.

14 Q And you hung out with Uncle Teddy you called him; is that  
15 right?

16 A Yes.

17 Q Frank Sparaco?

18 A Yes.

19 Q Frank Guerra, you called him BF; is that right?

20 A Yes.

21 Q Bobby Tarantola?

22 A Yes.

23 Q Anthony Ferrara?

24 A Yes.

25 Q All of you hung out at this candy store together?

RUSSO - CROSS - KEDIA

1 A Yeah.

2 Q Who owned that candy store?

3 A I don't know.

4 Q Do you recall meeting Frank Sparaco?

5 A Yes.

6 Q And when did you meet him?

7 A I don't recall. Sometime when I got out in the first few  
8 days.

9 Q In 1992 after you got out of jail?

10 A Yes.

11 Q You'd never met him before?

12 A No.

13 Q Now, did you begin committing crimes with Mr. Sparaco  
14 immediately?

15 A No.

16 Q Who is Frank Sparaco?

17 A From what I understood when I first met him, he was  
18 Michael's dear friend.

19 Q And Mr. Sparaco?

20 THE COURT: I'm sorry. He was Michael's...

21 THE WITNESS: Dear friend. One of his closest  
22 friends.

23 Q When did you meet Michael?

24 A Same time.

25 Q Around the same time in the --

RUSSO - CROSS - KEDIA

1 A Yeah.

2 Q -- in the days after getting out of jail?

3 A Yes.

4 Q And where did you meet him?

5 A I don't remember. It was around on the avenue there  
6 somewhere.

7 Q When you say "on the avenue" --

8 A Right across the street near Romantique, the candy store.  
9 Somewhere over there. I don't remember exactly.

10 Q Romantique is a car service business; is that right?

11 A Limousine service, yes.

12 Q Now, Mr. Sparaco, did there come a point in time very  
13 soon after you got out of jail that Mr. Sparaco asked you to  
14 be involved in a murder? Do you remember that?

15 A He asked me to help him with something.

16 Q Did he tell you what that something was?

17 A Well, I kind of figured knowing who Frankie was and what  
18 he's about, so I went and told Danny about it.

19 Q Did you agree to be involved in something with Frank  
20 Sparaco?

21 A Yes, I told him I would help him.

22 THE COURT: Ms. Kedia, can I just bother you for the  
23 spelling, the last name of Sparaco. Can you spell that for  
24 us, please.

25 MS. KEDIA: Yes, Your Honor, S-p-a-r-a-c-o.

RUSSO - CROSS - KEDIA

1 THE COURT: Thank you.

2 Q And you understood that Mr. Sparaco was asking you to be  
3 involved in a murder; is that right?

4 A Yes.

5 Q Now, did you tell Mr. Sparaco you had committed other  
6 murders in the past?

7 A No, I don't believe so.

8 Q Well, do you understand why he asked you, Anthony Russo,  
9 someone he had just met, to be involved in a murder?

10 A I have no clue.

11 Q And yet you agreed to do it?

12 A Yes.

13 Q Now, you met another person around that same timeframe  
14 when you first got out of jail by the name of Eric Curcio; is  
15 that right?

16 A Yes, I did.

17 Q And where did you meet Eric Curcio?

18 THE COURT: Again, could we just have the timeframe,  
19 please.

20 Q In 1992, shortly after you got out of jail in August of  
21 1992; is that right?

22 A Around there, yeah.

23 Q And how did you meet Mr. Curcio?

24 A On the avenue. Near the candy store, I believe.

25 Q The same candy store --

RUSSO - CROSS - KEDIA

1 A Yes.

2 Q -- that you hung out with Frank Sparaco?

3 A Yes.

4 Q And did Frank Sparaco introduce you to Eric Curcio?

5 A I don't remember who introduced me to him.

6 Q Do you recall telling the government that Frank Sparaco  
7 introduced you to Eric Curcio?

8 A I don't recall who introduced me to him. It might have  
9 been Frankie. I don't know. I don't remember.

10 Q And you began committing crimes with Eric Curcio soon  
11 thereafter, right?

12 A Yes.

13 Q You started dealing cocaine?

14 A Yes.

15 Q You started selling credit cards?

16 A Yes.

17 Q What does that mean, you started selling credit cards?

18 A We were selling active credit cards for 20 percent of  
19 what they were worth.

20 Q So meaning they were stolen credit cards?

21 A Stolen credit cards, yes.

22 Q You stole them from people and then you --

23 A No, we didn't steal the credit card.

24 Q -- sold them to other people?

25 A I didn't steal them from nobody.

RUSSO - CROSS - KEDIA

1 Q Somebody else stole them?

2 A So Eric had them and he would give them to me and I would  
3 sell them for 20 percent.

4 Q And how did you get involved with that with Eric?

5 A He just came to me.

6 Q Eric Curcio just came to you?

7 A Yes.

8 Q And asked you to help sell cocaine?

9 A Well, that's what we do on the street. We're criminals.  
10 We hang out together and we do bad things.

11 Q Did you meet Eric Curcio before you were in jail in  
12 between 1988 and 1992?

13 A No, I don't believe so. No.

14 Q So this is as soon as you came out he started committing  
15 crimes with you?

16 A Yeah. Yes.

17 Q Did you meet a guy by the name of Dino Basciano?

18 A I know who he is. I don't remember actually meeting him.

19 Q Who is he?

20 A He's an associate of the Luccheses.

21 Q Was he very close to Eric Curcio?

22 A I believe so.

23 Q And he was someone Eric Curcio also dealt cocaine with;  
24 is that right?

25 A I don't know what they did together.

RUSSO - CROSS - KEDIA

1 Q You know he was a major gun dealer?

2 A No. I didn't know that, no.

3 Q Now, Eric Curcio had a group that was around him a lot;  
4 is that right?

5 A Yes.

6 Q Who did they consist of?

7 A Johnny Sparacino, Johnny Pappa, Sal Sparacino. I don't  
8 know who else. There was a lot of kids from downtown that  
9 stood around.

10 Q Joe Monte, Junior?

11 A Yes, he was another one.

12 Q John Miccio, is that somebody?

13 A Joe Miccio?

14 Q Joe Miccio?

15 A I don't know. I don't know if he hung around him.

16 Q You know who he is?

17 A I heard of him, yeah.

18 Q Not someone you hung around with a lot?

19 A No.

20 Q Now, did Curcio know Frank Guerra or Bobby Tarantola?

21 A I'm sure they did, yes.

22 Q He knew them before he knew you; is that right?

23 A Oh, yes. A hundred percent, yeah.

24 Q Had you told -- did you ever tell Eric Curcio that you  
25 were involved in murders?

RUSSO - CROSS - KEDIA

1 A I don't remember that.

2 Q Did you ever discuss with Eric Curcio other crimes that  
3 you had committed?

4 A I don't remember what I talked about with Eric.

5 Q Now, how did you meet Johnny Pappa? You met Johnny  
6 Pappa; is that right?

7 A Yes.

8 Q How did you meet him?

9 A Through Eric.

10 Q When?

11 A Sometime in '92.

12 Q Sometimes in 1992. Soon after you got out?

13 A Maybe early '93. I don't remember exactly. It's a long  
14 time ago.

15 Q Well, this is someone you committed a murder with, right?

16 A Yes.

17 Q And certainly at the time that you committed a murder  
18 with him, you knew him pretty well?

19 A Excuse me?

20 Q At the time that you committed a murder with him, you  
21 knew him pretty well; is that right?

22 A As you're on to, yeah.

23 Q Is that a yes?

24 A I said yes.

25 Q What about John Sparacino?

RUSSO - CROSS - KEDIA

1 A What about him?

2 Q Do you know who John Sparacino is?

3 A Yes.

4 Q When did you meet him?

5 A I met them all around the same time.

6 Q Soon after you got out of jail in 1992; is that right?

7 A Yes.

8 Q Now, when you got out of jail you learned things about  
9 what you called was a family feud; is that right?

10 MR. LIFSHITZ: Objection to the --

11 Q An internal war?

12 THE COURT: Sustained as to form.

13 Q Mr. Russo, did you learn about something when you were  
14 released from jail that you called an internal war, a family  
15 war?

16 A Yeah. Yes.

17 Q And you testified that there was the Persico side and the  
18 Orena side; is that right?

19 A Yes.

20 Q And you testified that Chuckie Russo, JoJo Russo, Uncle  
21 Teddy, Joe Monte and Tommy Gioeli were people who were in the  
22 street at the time that you were released who were on the  
23 Persico side; is that right?

24 A Yes.

25 Q Now who is Tommy Gioeli?

RUSSO - CROSS - KEDIA

1 A I don't know him. I met him when I came home, Tommy, but  
2 he was a made member of the Colombo crime family when I met  
3 him.

4 Q And he's someone you also met when you came home in 1992?

5 A I believe I met him once, yeah. Maybe twice.

6 Q Now, there were also leaders on the Orena side of this  
7 war; is that right?

8 A Yes.

9 Q In fact, three quarters of the family was on the Orena  
10 side of the war; is that right?

11 A Most of them were on that side, yes.

12 Q And you had heard about this war from the news and from  
13 Frank Guerra and from hanging around in the candy store and  
14 the bagel store in the neighborhood; is that right?

15 A Yes.

16 Q And you discussed the war a lot with Frank Guerra and  
17 Bobby Tarantola and Frank Sparaco; is that right?

18 A Yes, I did. Danny Persico too.

19 Q And Danny Persico too?

20 A Yep. Eric, everybody.

21 Q And Frank Guerra told you about things that had happened  
22 to him, about people laying on him, about how he almost got  
23 killed; is that right?

24 A Yes.

25 Q And you heard stories about everybody hiding out in safe

RUSSO - CROSS - KEDIA

1 houses during the war and carrying guns?

2 THE COURT: Are we going somewhere with this?

3 MS. KEDIA: Yes, Your Honor.

4 THE COURT: Well, get there.

5 Q Did you hear about --

6 THE COURT: There's no jury here.

7 MS. KEDIA: I understand, Your Honor.

8 THE COURT: So get to the point.

9 THE WITNESS: Excuse me.

10 Q You heard about safe houses and everybody carrying guns;  
11 is that right?

12 A Heard about it and seen it.

13 Q You heard about it and you saw it?

14 A Everybody is carrying guns when I came home.

15 Q Now, did you hear about people, these people Joey Fusco,  
16 do you know who he is?

17 A Joey Fusco?

18 Q A guy Goo?

19 A Yes, Sally's brother.

20 Q Sally's brother. Who's Sally?

21 A Sally Fusco's brother.

22 Q And, Nicki Tormenia, do you know who he is?

23 A Nicki Tormenia.

24 Q Who is he?

25 A He was a friend of ours.

RUSSO - CROSS - KEDIA

1 Q An associate --

2 A Associate.

3 Q -- on the Persico side?

4 A He was an associate of Teddy, yeah, Teddy, Junior.

5 Q And Eddie Garafolo?

6 A Same thing, yes.

7 Q An associate of Teddy, Junior?

8 A Yes.

9 Q And Angelo Fifi, who is he?

10 A Yes.

11 Q Same thing meaning --

12 A Yes.

13 Q -- associate of Teddy, Junior?

14 Big Stevie?

15 A Big Stevie.

16 THE COURT: Where are we going with this?

17 MS. KEDIA: Your Honor, I want to clarify that  
18 these are people who are associates, Mr. Russo's understanding  
19 that these are people who are associates of the Colombo family  
20 on the Persico side of this war, Your Honor.

21 THE COURT: Let's get to the point.

22 Q Is that correct?

23 A I don't know who Big Stevie is.

24 Q Now, you testified that you --

25 THE COURT: No. We're not trying this whole case

RUSSO - CROSS - KEDIA

1 all over again. We're here for limited purposes concerning  
2 certain relevant conduct that the defendant doesn't want the  
3 Court to take into consideration. So I really would  
4 appreciate you getting to the point.

5 MS. KEDIA: Yes, Your Honor.

6 Q Mr. Russo, you testified you became involved in this war  
7 the minute that you got home in 1992; is that right?

8 A The minute I got home?

9 Q Yes.

10 A Yeah, I believe so.

11 Q What did you do?

12 A Just hanging around I was involved. Just being there my  
13 life was in danger.

14 Q Mr. Russo, weren't you told that there was -- the war was  
15 at a standstill when you got home?

16 A Ceasefire, yeah.

17 Q I'm sorry?

18 A A ceasefire like I heard.

19 Q A ceasefire? What is a ceasefire?

20 A Supposedly.

21 A ceasefire means nobody is shooting right now.

22 That everything is being calmed. Trying to work things out.  
23 That's what I took it as.

24 Q And that's what you understood when you got out?

25 A That's what, yes.

RUSSO - CROSS - KEDIA

1 Q And do you know the reason for the ceasefire?

2 A No, I don't.

3 Q Did you know that a lot of people from both sides had  
4 been arrested from the Persico side and the Orena side?

5 A Yes. And a lot of people were killed too. Yes.

6 Q And you testified that at stake during this war was Vic  
7 Orena was trying to take over the family; is that right?

8 A Yes.

9 Q Now, did you know that when you got out of prison in  
10 August of 1992 Vic Orena had been arrested and he was awaiting  
11 trial?

12 A Was he arrested when I came home?

13 Q Yes.

14 A I believe he was still out. He got arrested after I came  
15 home.

16 Q Did you know that he was convicted at trial in December  
17 of 1992 and received a life sentence?

18 A Yes.

19 Q Now, between the time you got out when you say your life  
20 was in danger, were you ever shot at?

21 A No. I don't believe so, no.

22 THE COURT: When?

23 Q When you came home in 1992, from the moment that you came  
24 home in 1992 and in the year that followed up until the time  
25 that you killed Joe Scopo in October of 1993, were you ever

RUSSO - CROSS - KEDIA

1 shot at?

2 A Yes.

3 Q By whom?

4 A I don't know who shot at me, no. I just don't know. The  
5 night of the murder of Joey Scopo.

6 Q On the night of the murder?

7 A Yes.

8 Q But before the night of the murder?

9 A No.

10 Q Between --

11 A I don't -- no.

12 Q -- August of 1992 and the night of the murder?

13 A Not that I remember. No.

14 Q Now, you testified that when you first became involved in  
15 the war the first thing that you did was you planned to murder  
16 Bill Cuotolo; is that right?

17 A Yeah, I believe so.

18 Q You called him Wild Bill; is that right?

19 A Yes.

20 Q And do you recall when this was, approximately?

21 A I'm going to say early '93.

22 Q And how is it that you came about planning to kill Bill  
23 Cuotolo?

24 A I don't remember how I came about it.

25 Q Well, you said you planned to kill him with Eric Curcio,

RUSSO - CROSS - KEDIA

1 Frank Guerra, Bobby Tarantola, Danny Persico and Anthony  
2 Ferrara; is that right?

3 A Well, you asked me how it came about. I'm not sure how  
4 it came about, but I do know we did try to kill him.

5 Q Did Eric Curcio ask you to get involved in this?

6 A I don't remember.

7 Q This is before you ever went after Joe Scopo; is that  
8 right?

9 A Yes.

10 Q Now, where were these attempts on Bill Cuotolo?

11 A Where he used to get his hair cut on 20th Avenue, 86th  
12 Street.

13 Q And what you did do in preparation for this?

14 A We laid back about a block and a half with shooters in  
15 one car and a crash car. Guys in another car, a crash car.

16 Q I'm sorry?

17 A We did it specifically on a Wednesday. We believe it was  
18 a Wednesday.

19 Q Why do you believe it was a Wednesday?

20 A Because that's when Billy used to get his hair cut. It  
21 was either a Wednesday or Thursday.

22 Q So you would go by this location where he would get his  
23 hair cut?

24 A Yes, at a certain time.

25 Q Was it always the same people going by?

RUSSO - CROSS - KEDIA

1 A Yes.

2 Q And how many people?

3 A Four or five of us.

4 Q Who were the people?

5 A Me, Bobby, BF, Little Anthony, Eric.

6 Q Johnny Pappa?

7 A No. He wasn't there in the beginning.

8 Q Mr. Russo, when you say "in the beginning," was he  
9 involved in attempts on Bill Cuotolo?

10 A He wasn't involved in the beginning.

11 Q Was he involved in attempts to murder Bill Cuotolo?

12 A Yeah, he got involved. Yes.

13 Q When did he get involved?

14 A Shortly after we started looking for Billy.

15 Q And so he was one of the people who was also part of this  
16 crew in crash cars or regular cars; is that right?

17 A Yes.

18 Q How many cars did you take out when you went to look for  
19 Bill Cuotolo?

20 A I don't remember. Two. I don't remember. Had to be at  
21 least two.

22 Q And whose cars were they?

23 A I don't remember.

24 Q Did you steal cars?

25 A I don't remember.

RUSSO - CROSS - KEDIA

1 Q Were you in cars with multiple people?

2 A Yes.

3 Q When you say that there were crash cars, how many crash  
4 cars were there?

5 A I don't remember.

6 Q What is a crash car?

7 A It's a car that protects the guys that are going to do  
8 the piece of work so nobody intervenes.

9 Q Did you also look for Bill Cuotolo at his house?

10 A Yes.

11 Q Where was his house?

12 A 40 something street. Canarsie. I don't remember  
13 exactly.

14 Q And you described an incident where Johnny Pappa was with  
15 you and you --

16 A With me and Frankie, yes.

17 Sorry I cut you off.

18 Q And Frankie meaning BF?

19 A Yes.

20 Q And you went by Bill Cuotolo's house and you were looking  
21 to kill him; is that right?

22 A Yes.

23 Q And you all had guns that day, right?

24 A I know me and John had guns, yes.

25 Q What kind of guns did you have?

RUSSO - CROSS - KEDIA

1 A I had a .38 on me and John had the Mack ten.

2 Q John had the MAC-10?

3 A Yeah.

4 Q So what is the MAC-10?

5 A Machine gun.

6 Q Where did he get it?

7 A Where did he get it from?

8 Q Yes.

9 A From me.

10 Q He got it from you?

11 A Yes.

12 Q Where did you get it?

13 THE COURT: Excuse me.

14 Ms. Kedia, the issue here is the murder of  
15 Scopolo -- of Scopo, excuse me, and other relevant conduct for  
16 the Court to consider as described in the presentence report,  
17 loansharking, sale of stolen or some incident involving stolen  
18 videos and so on. So I don't know why we're going into so  
19 much detail about other incidents that do not address this  
20 relevant conduct.

21 It seems to me that if you direct your cross  
22 examination to what was discussed on direct, that you can  
23 accomplish the same thing.

24 MS. KEDIA: I understand, Your Honor.

25 This was specifically discussed on direct, and I

RUSSO - CROSS - KEDIA

1 would explain what I'm getting at, but I would not -- I would  
2 ask that I not explain it in front of the witness.

3 THE COURT: Well, we're not doing a mini trial here.

4 MS. KEDIA: I understand, Your Honor.

5 THE COURT: You're not understanding because I've  
6 said this now ten times this morning in the span of an hour  
7 and 20 minutes. So can you move it on, please.

8 MS. KEDIA: I will, Your Honor.

9 Q Mr. Russo, you started looking for Bill Cuotolo before  
10 you ever started looking for Joe Scopo; is that right?

11 A Yes.

12 Q And you attempted to kill Bill Cuotolo before you ever  
13 started looking for Joe Scopo; is that right?

14 A Yes.

15 Q And on these occasions you and other people had weapons;  
16 is that right?

17 A Yes.

18 Q And there were any number of people with you who were  
19 armed and had various cars that they were using on these hunts  
20 to kill Bill Cuotolo; is that right?

21 A Yes.

22 Q Now, you next decided after going after Bill Cuotolo --  
23 you ever never able to get Bill Cuotolo, is that what  
24 happened?

25 A No.

RUSSO - CROSS - KEDIA

1 Q And why is that?

2 A Because we never got him.

3 Q Because you couldn't locate him or you just --

4 A Because the --

5 Q -- or you never had the opportunity?

6 A The situation just didn't work out.

7 Q You knew where he was, at his home and at the barber  
8 shop, right?

9 A Yeah.

10 Q Now, when you started going after Scopo, do you recall  
11 when that was?

12 A Sometime in '93.

13 Q How long had you been trying to get Bill Cuotolo at that  
14 time?

15 A I don't remember.

16 Q Well, do you remember if it was weeks or months?

17 A I don't remember.

18 Q When did you start looking for Joe Scopo in '93?

19 A I can't give you an exact date. It was sometime in '93.

20 Q You don't recall if it was the middle of the year or the  
21 beginning of the year, the end of the year?

22 A No, I don't.

23 Q And did you look for him on multiple occasions?

24 A Yes, we did.

25 Q And, in fact, Curcio, Eric Curcio, is the one who found

RUSSO - CROSS - KEDIA

1 out where Joe Scopo was living; is that right?

2 A Yes.

3 Q And where was he living?

4 A First he was in Canarsie and then he moved to Queens.

5 Q And Joe Scopo is someone that you tried to kill when he  
6 was living in Canarsie; is that right?

7 A Yes.

8 Q You described an incident, a time when you went by his  
9 house and his head was in a garbage can; is that right?

10 A Yes.

11 Q Now, describe this incident.

12           Were you in a car with -- who were you in a car  
13 with, let me ask you that?

14           THE COURT: What incident?

15           MS. KEDIA: Mr. Russo testified on direct  
16 examination about an attempt on Joe Scopo's life when he was  
17 living in a house in Canarsie so I'm asking --

18           THE COURT: Are you talking about the day that his  
19 head was in the garbage?

20           MS. KEDIA: Yes, I am.

21           THE COURT: Okay. That was a very simple statement.  
22 Do you see how easy that was. Thank you.

23 Q Mr. Russo, do you recall testifying about this incident  
24 when you --

25 A Yes.

RUSSO - CROSS - KEDIA

1 Q Now, who was with you that day?

2 A Me and BF and I believe John was in the car with us. I  
3 think Eric and Anthony Ferrara were together in crash cars.  
4 They had their own cars.

5 Q Who had their own cars?

6 A Eric and Anthony.

7 Q They each had their own car?

8 A I believe so, yes.

9 Q And you and Guerra were together?

10 A Yes. Me, Guerra and Johnny Pappa.

11 Q And Johnny Pappa.

12 And you were all in one car together?

13 A Yes, I believe so. I think Johnny was with Eric and then  
14 he jumped out of the car and came with me and BF.

15 Q What car were you in?

16 A Ah, I was in Frankie's truck, his jeep. His father's  
17 jeep.

18 Q And were you going to be a shooter that day?

19 A Well, I had a pistol on me. Yes.

20 Q Well, did you have a plan on --

21 A Yes, we had a plan.

22 Q -- that you were going to --

23 A And we were going to go out and get him, yes, me and  
24 John.

25 Q You and John --

RUSSO - CROSS - KEDIA

1 A Pappa.

2 Q You and John Pappa were going to be the shooters?

3 A Yes.

4 Q And as you drove around Mr. Scopo's house, explain what  
5 happened?

6 A We were looking for a nice place to park.

7 Q A nice place to park?

8 A A nice place to park so we could lay on him, yes. And we  
9 went around the block and when we started pulling up to park  
10 the car we seen a guy in the garbage can when we went around  
11 the block. When we came back, he was walking up the stairs.

12 Q Where was this garbage can, in front of his house?

13 A Right in front of his house, yes.

14 Q Right in front of his house?

15 A Yes.

16 Q And you just couldn't make out who it was?

17 A No.

18 Q And when you went around the block, meaning behind the  
19 his house or around --

20 A He was up on his porch going in his front door already.

21 Yes.

22 Q And going up the stairs and going into his front door?

23 A Yes.

24 Q And you have a vivid recollection of this?

25 A Vivid, as best as I can recall, yes.

RUSSO - CROSS - KEDIA

1 Q Now, do you recall where this house was?

2 A No, not exactly. No.

3 Q No?

4 A No.

5 Q When you started cooperating and you told the agents  
6 stories about looking for Joe Scopo, you went on drive-arounds  
7 with them, right, with the agents?

8 A Did I go on drive -- one time, yeah.

9 THE COURT: At what time frame?

10 Q Yes. Mr. Russo, after you started cooperating --

11 A Yes.

12 Q -- in 2011, you had told the agents about various  
13 attempts on Bill Cuotolo and on Joe Scopo; is that right?

14 A Yes.

15 Q And did you go on drive-arounds with agents at some  
16 point?

17 A Yes.

18 Q Did you show them where Joe Scopo's house was?

19 A In Queens, yes.

20 Q Did you show them where Joe Scopo's house was in  
21 Brooklyn?

22 A No.

23 Q Why not?

24 A Because they didn't ask. And I don't recall.

25 Q You showed them where Joe Scopo's club was; is that

RUSSO - CROSS - KEDIA

1 right?

2 A Yes.

3 Q Now, Mr. Russo, you testified about getting guns for the  
4 Scopo murder, right?

5 A Yes.

6 Q When did you get these guns?

7 A Exactly when I got them? I can't give you a date and  
8 time.

9 Q Approximately?

10 A Mid '93. February, March, April, like that.

11 Q You'd been going after Cuotolo for a while at this point,  
12 right?

13 A Yes.

14 Q Now you decided to focus on Joe Scopo; is that right?

15 A Yes.

16 Q And at some point while you're focusing on Joe Scopo you  
17 get guns; is that right?

18 A We get more guns, yes.

19 Q You get more guns?

20 A Yeah.

21 Q So you had guns already?

22 A We had a couple guns, yeah.

23 Q Guerra was involved in the war for a number of years and  
24 had a number of guns, right?

25 A Excuse me?

RUSSO - CROSS - KEDIA

1 Q Frank Guerra was involved in the war for a number of  
2 years and had a number of guns; is that right?

3 A Frank Guerra didn't have no guns.

4 Q He didn't have no guns?

5 A He didn't have no guns when I was with him.

6 Q Bobby Tarantola had guns?

7 A I don't know. He might have.

8 Q Anthony Ferrara?

9 A I don't know.

10 Q Well, who had guns? You said you had a bunch of guns.

11 A When we showed up, we had guns for the Billy thing and I  
12 don't remember exactly who had the guns. I'm sorry.

13 Q Who is "we"? You did?

14 A I had a gun, yeah.

15 Q John Pappa did?

16 A Yes.

17 Q John Sparacino did?

18 A John Sparacino wasn't with us when we went looking for  
19 Billy.

20 Q What about Eric Curcio?

21 A I don't believe he had a gun on him. No, he was just a  
22 crash car driver.

23 Q Eric Curcio was always going to be a crash car driver?

24 A Yes.

25 Q How was it decided, Mr. Russo, who was going to be a

RUSSO - CROSS - KEDIA

1 shooter and who was going to be a crash car driver?

2 MR. LIFSHITZ: Can we just clarify for which plot  
3 this was?

4 THE COURT: Yes.

5 MS. KEDIA: Yes.

6 Q Let's start with Cuotolo.

7 A I don't remember.

8 THE COURT: Again with the Cuotolo. Can we just  
9 stick to the Scopo.

10 MS. KEDIA: Yes, Your Honor.

11 Q With respect to Joe Scopo?

12 A We decided that Johnny Sparacino and Johnny Pappa would  
13 do the shooting. I was the driver and I had a gun on me also  
14 just in case.

15 Q You had a gun on you when you -- you're talking about the  
16 day you shot Scopo?

17 A Yes.

18 Q The day you shot and killed him?

19 A Yeah, I had a gun in the car.

20 Q Well, Mr. Russo, do you recall testifying at Frank  
21 Guerra's trial that you didn't have a gun on you?

22 A No, I don't.

23 MS. KEDIA: Give me one moment, Your Honor.

24 Q Mr. Russo, do you recall being asked this question and  
25 giving this answer? It's AR 63, page 704.

RUSSO - CROSS - KEDIA

1 THE COURT: You mean 3500 AR.

2 MS. KEDIA: AR 63.

3 THE COURT: 63. I'm sorry, what was the page?

4 MS. KEDIA: Page 704.

5 And I'll start actually on page 703 at the bottom,  
6 Your Honor.

7 Q Question: Okay -- line 23. And who was in your car?

8 Answer: Me, Johnny Pappa and John Sparacino.

9 Question: And who was driving? Who was the  
10 passenger? Who was rear passenger?

11 Answer: I was driving, Johnny Pappa was in the  
12 front passenger, and Johnny Sparacino is behind me.

13 Question: And who had guns?

14 Answer: Johnny Pap and Johnny Sparacino.

15 Question: What were the guns that they had?

16 Answer: Johnny Sparacino had the MAC-10, and I  
17 don't know exactly what Johnny -- he had a pistol on him. I  
18 know that. I don't know what caliber.

19 Question: And for those of us who don't know what a  
20 MAC-10 is, what is a MAC-10?

21 Answer: It's a machine gun.

22 Question: And you loaded that with 30 rounds?

23 Answer: Yes, I did.

24 Question: Did you have a gun?

25 Answer: No, I don't believe I did. No.

RUSSO - CROSS - KEDIA

1                   Question: You don't remember if you had a gun?

2                   Answer: I didn't have a gun, no.

3                   Question: Would you go out on a hit and not have a  
4 gun?

5                   Answer: I didn't have a gun. I was the driver.

6                   Do you remember being asked those questions and  
7 giving those answers.

8 A                 Yes, I do.

9 Q                 Are you telling the truth today or were you telling the  
10 truth at that time when you testified at the Frank Guerra  
11 trial?

12                  MR. LIFSHITZ: Objection.

13                  MS. KEDIA: I'm sorry. I didn't hear the answer.

14                  THE COURT: Sustained as to form.

15                  Can you rephrase your question, please.

16                  MS. KEDIA: Yes, Your Honor.

17 Q                 Were you lying when you testified at the Frank Guerra  
18 trial --

19 A                 No, I wasn't.

20 Q                 -- about carrying a gun?

21 A                 No, I wasn't. Maybe I made a mistake. I don't remember.

22 Q                 When did you make a mistake?

23 A                 About the gun.

24 Q                 When did you make a mistake, at that time or now?

25 A                 I don't remember. You know what, I'm so confused right

RUSSO - CROSS - KEDIA

1 now. Going over the same thing over and over and over.

2 Q You've gone over and over and over it many, many, many,  
3 many times with the government; is that right?

4 MR. LIFSHITZ: Objection to "it".

5 THE COURT: Yes. Sustained as to form.

6 Q Mr. Russo, you've gone over your stories about attempts  
7 on Joe Scopo and the actual hit on Joe Scopo on any number of  
8 occasions with the government; is that right?

9 A I'm sure I did, yeah.

10 Q Do you remember the things that you told them or you  
11 don't?

12 A Do I remember?

13 Q Yes.

14 A I can't --

15 THE COURT: Sustained as to form. That's a very  
16 vague question.

17 As you sit here right now, do you remember whether  
18 or not you had a gun? This was the first incident, correct?

19 MS. KEDIA: This is the night of the murder, Your  
20 Honor.

21 THE COURT: The night of the murder.

22 THE WITNESS: I don't remember.

23 THE COURT: Okay. Move on.

24 Q Now, Mr. Russo, you -- on the night of the murder, you  
25 were in a stolen vehicle; is that right?

RUSSO - CROSS - KEDIA

1 A Yes.

2 Q And you testified that you thought it was a Chevy; is  
3 that right?

4 A I testified I believe that I don't remember what it was.  
5 I know it was a brown four door.

6 Q Well, when you testified in this courtroom on direct  
7 examination just a short time ago, you testified that you  
8 thought it was a brown Chevy; is that right?

9 A If that's what I said, yes, then.

10 Q Well, do you remember saying that, Mr. Russo?

11 A Listen, I -- Your Honor, I got to say something.

12 THE COURT: Okay. Please, no arguing. Do you  
13 remember?

14 THE WITNESS: I got a lot of things on my mind. I  
15 just lost my son and that's not really --

16 THE COURT: I'm sorry. When did that happen?

17 THE WITNESS: June 29th. And I'm starting to like  
18 get aggravated right now.

19 THE COURT: Okay. Just --

20 THE WITNESS: I got a lot of things on my mind.

21 THE COURT: Okay. You need to step back. Just  
22 answer the question.

23 We can reread the question. Can you reread the last  
24 question, please.

25 (Record read.)

RUSSO - CROSS - KEDIA

1                   THE COURT: The question is do you remember when you  
2 were testifying on direct a couple of weeks ago at this  
3 hearing in this courtroom that the car involved was a brown or  
4 tan Chevy?

5                   THE WITNESS: I believe so.

6 Q       Mr. Russo, did you steal other cars before you stole this  
7 particular car?

8 A       I've never stolen cars. I don't know how to steal a car.  
9 John Matera stole that car for us.

10 Q       Did John Matera or anyone that you were doing attempts to  
11 kill Scopo with steal any other cars on other occasions?

12 A       I don't remember.

13 Q       Do you remember ever using a stolen car on attempts to  
14 murder Joe Scopo before this particular --

15 A       We used a van. We had a van.

16 Q       Where did the van come from?

17 A       I don't recall where it came from.

18 Q       What kind of van?

19 A       It was a white van.

20 Q       Who stole it?

21 A       Pulled up to meet everybody and they were in the van.

22 Q       And tell us about that occasion when you pulled up to  
23 meet everybody and they were in the van. Tell us when it was  
24 first.

25 A       It was when we were looking for Joey Scopo.

RUSSO - CROSS - KEDIA

1 Q And when approximately is this?

2 A I don't know. Twenty something years ago. I really  
3 don't.

4 Q I understand, Mr. Russo, but you've testified to a lot of  
5 events from --

6 A Okay.

7 Q -- twenty something years ago; is that right?

8 A Excuse me?

9 Q You've testified to a lot of events from 20 something  
10 years ago; is that right?

11 A Well, just to the one, the murder, is 20 something years  
12 ago.

13 Q Well, and attempts to murder Mr. Scopo?

14 A Yes. Yes.

15 Q And Mr. Cuotolo?

16 A Yes.

17 Q And on direct examination you gave significant details  
18 about both of those situations; is that right?

19 A Yes.

20 Q And do you remember them or are you making them up?

21 A No, I'm not making that up. I remember them as I  
22 remember them.

23 Q So when you had this van, where were you? When you  
24 talked about this van where people pulled up in and you just  
25 got in --

RUSSO - CROSS - KEDIA

1 A I met them in Queens.

2 Q Where in Queens?

3 A Me and Frankie met Eric and Johnny Pappa, Robert  
4 Tarantola.

5 MR. LIFSHITZ: Your Honor, I don't know if the  
6 Court was planning to take a break during the morning, but if  
7 you were, maybe this is a good time for it.

8 THE COURT: I was going to take a break in a couple  
9 of minutes.

10 Q So where in Queens, Mr. Russo?

11 A Around the area where his club was which is, I believe,  
12 Ozone Park. I don't know.

13 Q And what did you do on that occasion?

14 A We met and we just drove around and looked for him.

15 Q Meaning you didn't know where he was?

16 A Well, we'd go home, we'd have to go look for him. We  
17 went by his club, his house.

18 Q And did you have other cars or just the stolen car that  
19 day?

20 A Well, we had our cars parked and we just went in the van,  
21 all of us.

22 Q Everybody went in the van?

23 A Yes.

24 Q Did you have guns on you?

25 A I don't remember.

RUSSO - CROSS - KEDIA

1 Q If you found him, were you going to kill him?

2 A You're talking about one occasion. I don't remember that  
3 occasion. We did it multiple times looking for him over there  
4 near his club so.

5 Q Is this a van you used on multiple occasions?

6 A We used it a few times, yes.

7 Q When you were in this van, all of you, the people that  
8 you described just a few moments ago, all of you were in this  
9 van and you're looking for Joe Scopo; is that right?

10 A Yes.

11 Q This is before -- certainly before October 20 of 1993  
12 when he was killed?

13 A Absolutely.

14 Q And were you planning on killing him if you found him?

15 A If we found him, yes.

16 Q There are no other cars than the crash cars. There are  
17 no other -- just everybody --

18 A We had the car.

19 Q -- piled in one car?

20 A The incident I'm talking about is we were just driving  
21 around looking to see if we could find him.

22 THE COURT: Okay. Please, you need to let Ms. Kedia  
23 finish asking her question before you answer.

24 Why don't we take a break now. We'll come back.

25 The clock in the courtroom is wrong. It's about five or six

RUSSO - CROSS - KEDIA

1 minutes behind so we'll gather back up here at noon. We'll  
2 take a 15-minute break. Okay.

3 So remember that you can't talk about your testimony  
4 with the government.

5 THE WITNESS: Yes, Judge.

6 THE COURT: Scheduling you can talk about, but not  
7 your testimony. Okay.

8 All right. I'll see everybody back here at noon.  
9 Thank you.

10 Ms. Kedia, are you going to play any more tapes?

11 MS. KEDIA: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. SERCARZ: Your Honor, are we still on the  
14 record?

15 THE COURT: We could be.

16 MR. SERCARZ: I thought it -- just sitting here I  
17 thought it might be helpful if I made an offer of proof so  
18 that the Court understood why Ms. Kedia went back to the  
19 Cuotolo attempt. After all, you're the finder of the fact.  
20 We want you to understand the import of this cross  
21 examination. And, quite frankly, I'd like for my colleague to  
22 have some latitude.

23 Can I explain it to you, showing you citations from  
24 the transcript now? Will that be helpful?

25 THE COURT: No. I need to take a break and take

RUSSO - CROSS - KEDIA

1 care of something now.

2 MR. SERCARZ: That's fine.

3 THE COURT: And this is a limited hearing. This is  
4 not a free for all.

5 MR. SERCARZ: Understood.

6 (Recess taken.)

7 (Continued on the following page.)

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## PROCEEDINGS

1                   THE COURT: Before we bring out the witness,  
2 Mr. Secarz, you wanted to make some legal argument.

3                   MR. SERCARZ: A factual argument rather than a legal  
4 argument. Frankly, Your Honor, it's to try and assist  
5 Ms. Kedia and the Court in understanding the relationship  
6 between that effort on the life of Mr. Cuotolo and the Scopo  
7 homicide.

8                   Your Honor, at page 37 of the -- withdrawn. At  
9 page 35 of the transcript of the direct examination, Mr. Russo  
10 makes it clear that the plan to kill Mr. Scopo took place and,  
11 I quote, after they planned to murder "Wild Bill".

12                  THE COURT: Cuotolo.

13                  MR. SERCARZ: Let me get you there. It will take  
14 three seconds. The Court may recall and, indeed, you should  
15 next go to page 40 of the direct testimony.

16                  The plan to the plan to kill Scopo allegedly began  
17 when Michael Persico said, Go see Eric, he's a line on Joey.

18                  The next piece of testimony on the direct  
19 examination is, the meeting takes place between Eric and  
20 Mr. Russo and Mr. Russo comes back and asks Mr. Persico for  
21 weapons. At that point, according to the direct testimony  
22 that you heard two weeks ago, my client, Mr. Persico, says  
23 that Smiley is going to deliver a bag and the bag contains  
24 weapons. The weapons are a MAC 10 and two pistols.

25                  Now the import of this cross-examination, I

## PROCEEDINGS

1 respectfully submit, is that if they already had the MAC 10  
2 and the pistols when they were going after Mr. Cuotolo, they  
3 didn't get those weapons as a result of a conversation that  
4 they had with Michael Persico. That's why it's important for  
5 us to elicit the sequence of events and Ms. Kedia made it very  
6 clear with this again with this witness today, that first they  
7 went after Cuotolo, then they went after Scopo. That when  
8 they went after Cuotolo they already had the MAC 10 and the  
9 .38 caliber weapon.

10 Now the government may attribute this to a faulty  
11 memory of an event that is 25 years old, but given that the  
12 only evidence that they have tying Mr. Persico to the Scopo  
13 homicide or statements they are attributing to him, these  
14 inconsistencies have weight. And I thought it would be useful  
15 for you to have that, Your Honor, in hearing where Ms. Kedia  
16 is going with this cross-examination. Unfortunately, we don't  
17 get to give opening statements at hearings like this, so it's  
18 not always clear to the finder of the fact where we're headed,  
19 but that's where we're headed. And, indeed, I respectful  
20 submit --

21 THE COURT: But she's already elicited all of this  
22 business about the Cuotolo murders and when it occurred. So  
23 let's move on to the gist of what we have to do.

24 MR. SERCARZ: Fair enough. But I wanted you to  
25 understand from our perspective this piece so that you could

## PROCEEDINGS

1 have it for what it's worth and consider whether or not there  
2 aren't similar factual inconsistencies which cast doubt on the  
3 other statements that they've attributed to Michael Persico.

4 THE COURT: Aren't there transcripts of  
5 conversations of Mr. Persico that were suppressed in the  
6 Guerra trial --

7 MS. KEDIA: No, Your Honor.

8 THE COURT: -- concerning the Scopo murder?

9 I'm asking the government.

10 MS. KEDIA: Oh, I apologize.

11 THE COURT: And let me finish asking the question  
12 before you answer.

13 MR. LIFSHITZ: Your Honor, no, I don't believe so.  
14 There were prison recordings that may have related to a  
15 different murder that was charged against Guerra that were  
16 suppressed --

17 THE COURT: Okay.

18 MR. LIFSHITZ: -- but not relating to the Scopo  
19 murder.

20 THE COURT: Okay.

21 We have folks in the audience, I assume nobody there  
22 is a witness for this hearing.

23 MS. KEDIA: No, Your Honor --

24 MR. LIFSHITZ: Not for the government.

25 MS. KEDIA: -- not for the defense.

## PROCEEDINGS

1                   THE COURT: I wanted to make sure. I wanted to ask  
2 earlier.

3                   Do you wish to respond, Mr. Lifshitz?

4                   MR. LIFSHITZ: Your Honor, I think whatever the  
5 defense argument is, the record is now made. I don't think  
6 this witness said that the same Mac 10 was used to kill Scopo  
7 as it had been provided previously for Cuotolo, but if they  
8 want to make that argument based on the record I think they  
9 have the tools that they have tried to establish to do that.

10                  THE COURT: I think that the ground has been covered  
11 sufficiently, so let's just move on with the rest of it.

12                  We can bring out the witness.

13                  MR. LIFSHITZ: Thank you, Your Honor. Can we ask  
14 for a rough estimate how much longer the cross?

15                  THE COURT: How much more do you have on cross?

16                  MS. KEDIA: Certainly I'll be going after lunch,  
17 Your Honor, it really depends on how quickly I get the witness  
18 to answer the question. I have still several areas to cover  
19 though.

20                  THE COURT: All right. Well, get to the point.  
21 Okay. I made time until tomorrow if we have to continue the  
22 hearing until tomorrow.

23                  MS. KEDIA: Thank you, Your Honor.

24                  Judge, I take it we will be sitting until  
25 5:00 o'clock today?

## PROCEEDINGS

1                   THE COURT: Yes, we'll probably take a mid-afternoon  
2 break.

3                   This is a Fatico hearing continued, same appearances  
4 as this morning. Mr. Russo has resumed the witness stand.

5                   I remind, sir, you that you are still under oath.  
6 There is water there for you --

7                   THE WITNESS: Yes.

8                   THE COURT: -- if you would like some water just  
9 always be careful with the pitcher.

10                  You may inquire when you are ready, Ms. Kedia.

11                  MS. KEDIA: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. KEDIA:

14 Q               Mr. Russo, you testified on direct examination that you  
15 started looking for Joey Scopo when Michael asked you to go  
16 down to see Eric, you recall that?

17 A               Yes.

18 Q               And you testified that Michael said Eric had told him  
19 that he had a line on Joey; is that right?

20 A               Yes.

21 Q               You were with BF on that date?

22 A               When I went to see Eric, yes.

23 Q               Did you go see Eric just following your conversation with  
24 Michael Persico?

25 A               We went down to see Eric, yes.

RUSSO - CROSS - KEDIA

1 Q So you had the conversation and then you went to see  
2 Eric, meaning I'm asking if it happened all on the same day?

3 A Yes.

4 Q Do you recall testifying at the Guerra trial that when  
5 you went to see Eric you were alone, you were not with BF?

6 A Excuse me?

7 Q Do you recall testifying at the Guerra trial that you  
8 were not with BF --

9 A No, I don't.

10 Q -- you were alone when you went to see Eric?

11 A No I don't remember that.

12 Q Where did you go see Eric?

13 A Downtown, Brooklyn.

14 Q Where?

15 A Downtown, Henry Street.

16 Q And what's on Henry Street?

17 A He had a club down there.

18 Q And do you recall that when you went to see Eric that  
19 you -- that it was just you and Eric on that particular  
20 occasion?

21 A No, I don't remember that.

22 Q Because that's not what happened, you were with BF; is  
23 that right?

24 A I believe so, yes.

25 Q Do you recall -- let me ask you this -- being asked these

RUSSO - CROSS - KEDIA

1 questions and giving these answers?

2 THE COURT: When?

3 MS. KEDIA: I'm just looking for the page, Your  
4 Honor, on --

5 THE COURT: When and at what proceeding?

6 BY MS. KEDIA:

7 Q Mr. Russo, at the Guerra trial, at Frank Guerra's trial  
8 when you testified, do you recall being asked these questions  
9 and giving these answers on page 206 and 207.

10 THE COURT: Can we have the exhibit number again,  
11 please.

12 MS. KEDIA: Yes, 3500AR63, Your Honor.

13 THE COURT: I'm sorry, the page again.

14 MS. KEDIA: Page 206 starting at line 22.

15 "Q You said that after you spoke to Michael  
16 Persico you went to see Eric at his club, what happened  
17 during that meeting?

18 "A He called me about that he had a lead on  
19 Joey, that he wanted to get Joey. He wanted to know if  
20 I was interested and BF. And I told him I don't know  
21 about BF I would have to talk to him about it. I said,  
22 we'll get together and we'll discuss it.

23 "Q What happened next?

24 "A I went to talk to BF, we had a  
25 discussion, he said no problem. I told him maybe just

RUSSO - CROSS - KEDIA

1 me him and Bobby Tarantola would get involved, Little  
2 Anthony, the four of us and Eric.

3 "Q What happened next?

4 "A And then Eric -- after we decided we  
5 were going to do this, we went to see Eric, me and BF,  
6 and we told him we were going to do it."

7 Do you remember being asked those questions and  
8 those answers?

9 A No, I don't.

10 Q And do you remember being asked at that same proceeding  
11 at page 694, Your Honor -- line 6, Your Honor, I'm starting  
12 at.

13 "Q Now Mr. Curcio had a club on Henry  
14 Street.

15 "A I believe so, yes.

16 "Q And you were there?

17 "A Yes.

18 "Q And this is when he told you that he was  
19 laying on Joey?

20 "A He said he wanted to know if we could  
21 help him out with that.

22 "Q And did he say Joey or Joey Scopo?

23 "A I think he just said Joey Scopo, yes.

24 "Q And he asked you for your help?

25 "A He asked if I would help him, me,

RUSSO - CROSS - KEDIA

1 Frankie and Bobby.

2 "Q Okay. So he just blurted out saying  
3 would the three of you help even though the other two  
4 weren't with you at the time?

5 "A Yes.

6 "Q So he's having a conversation with you  
7 and the other two at the same time?

8 "A Me and the other two? It was just me  
9 and Eric that day."

10 Do you remember being --

11 A No, I don't.

12 Q -- asked those questions and giving those answers?

13 A No.

14 Q Mr. Russo, do you remember if it was just you and Eric  
15 that day or not?

16 A No, I believe it was me and BF.

17 Q So if you testified that it was just you and Eric, were  
18 you lying?

19 A No, I was not.

20 MR. LIFSHITZ: Objection, Your Honor.

21 THE COURT: Overruled. I'll allow it. The answer  
22 will stand.

23 Q Now, Mr. Russo, at this time when you are -- this is when  
24 you first begin to start looking for Joe Scopo; is that right?  
25 Following this conversation, is that right, with Eric?

RUSSO - CROSS - KEDIA

1 A A certain amount of time after that, yes. A little while  
2 after the conversation I guess we --

3 Q You had this conversation with Eric and then sometime,  
4 what, weeks, days, months after that?

5 A I don't -- I don't know.

6 Q And at that point you had already been looking for Bill  
7 Cuotolo for some time?

8 A Yes, we did.

9 Q And at that point you stopped looking for Bill Cuotolo  
10 and you started looking for -- you stopped looking to kill  
11 Bill Cuotolo and you started looking to kill Joe Scopo?

12 A Yes.

13 Q And did you have any understanding as to why you were  
14 stopping looking for Bill Cuotolo and starting to look for Joe  
15 Scopo?

16 A I don't remember why we stopped looking for Billy.

17 Q Now, Mr. Russo, you testified about a conversation that  
18 you allegedly had with Mr. Persico while you were looking for  
19 Joe Scopo. Do you recall testifying about various  
20 conversations you had with him?

21 A With Michael?

22 Q Yes.

23 A Yeah.

24 Q And you testified that at some point Michael Persico  
25 said, you've got to get this done before Allie goes to trial,

RUSSO - CROSS - KEDIA

1 do you recall that?

2 A That's what I remember, yes.

3 Q And do you know when Allie was scheduled to go to trial?

4 A No, I do not.

5 Q Do you know what Allie was scheduled to go to trial for?

6 A Something about the war.

7 Q What does that mean, something about the war?

8 A He was on trial for something that had to do with the  
9 war, I don't know. He was on trial, he was going to trial.

10 Q He was in prison right?

11 A Yes.

12 Q And you testified that the reason -- your understanding  
13 of the reasons you had to get this done before he went to  
14 trial is that at least he would have an alibi, meaning Allie  
15 Persico would have an alibi, right?

16 A That's the way I took it, yes.

17 Q That if he's in jail he had nothing to do it?

18 A That's the way I took it, yes.

19 Q Nobody said that to you that's just what you understood  
20 it to be?

21 A Yes.

22 Q When was this conversation?

23 A I don't remember.

24 Q How long before you killed Joe Scopo was this  
25 conversation?

RUSSO - CROSS - KEDIA

1 A It was before we killed him, yes.

2 Q How long before?

3 A I can't recall.

4 Q You testified about a funeral --

5 A Right.

6 Q -- where you saw Teddy Persico --

7 A Right.

8 Q -- junior.

9 Do you recall that?

10 A Yes.

11 Q Do you recall when that was?

12 A It was sometime in '93, I don't know exactly. It was  
13 warm out, maybe March, April, May, June, I don't remember. I  
14 don't recall.

15 Q Was this conversation with Michael Persico about getting  
16 this done before his brother goes to trial, was this before or  
17 after the funeral?

18 A It was before his brother was going to trial.

19 Q Was it before or after the funeral?

20 A I don't recall.

21 Q Do you know how long before you killed Joe Scopo this  
22 conversation occurred?

23 THE COURT: Asked and answered. Move on.

24 Q Did you know Allie Persico at that point?

25 A No.

RUSSO - CROSS - KEDIA

1 Q He had been in jail the whole time that you were out; is  
2 that right --

3 A Yes.

4 Q -- after you got out in 1992?

5 A Yes.

6 Q Do you know that he was indicted in May of 1993?

7 A No. I know he was in jail.

8 Q Do you know that he was facing several war related  
9 murders having ordered them?

10 A Did I know that?

11 Q Right.

12 A I heard that, something like that.

13 Q And that he was facing a trial for conspiracy to murder  
14 those aligned with the Orena faction?

15 A No, I don't know.

16 Q You don't know.

17 Do you know that he went to trial in the summer of  
18 1994?

19 A I believe so, I believe that's right.

20 Q You believe that's right?

21 A I believe so.

22 Q He was acquitted on August 8th, 1994, do you recall that?

23 A Yes.

24 Q You said that after -- so you have no recollection of  
25 when that conversation was, but you testified on direct

RUSSO - CROSS - KEDIA

1 examination that that conversation occurred and then you lost  
2 Scopo for a little while; is that right?

3 A You're asking for specific dates and times, I can't do  
4 that.

5 THE COURT: It's a compound question.

6 Q You testified about this conversation you had --

7 A Yes.

8 THE COURT: Okay, yes.

9 A Yes.

10 Q And you testified on direct examination that after that  
11 conversation, we had problems finding Scopo because he moved  
12 to another area and we didn't know where he was.

13 A Is that what I testified to then, yes.

14 Q Well do you recall that? Is that correct?

15 A Yes.

16 Q I'm talking about two weeks ago.

17 A How do I say this again? Yes.

18 Q Do you know when Scopo moved out of his Brooklyn home and  
19 into his Queens home?

20 A Do I know when Scopo moved out --

21 Q Yes.

22 A -- of Brooklyn to Queens?

23 Q Yes.

24 A No, I can't give you specific dates and times. '93.

25 Q In '93.

RUSSO - CROSS - KEDIA

1 A Yeah.

2 Q About?

3 A Yeah.

4 Q And you said you stopped looking for him for a few weeks;  
5 is that right?

6 A Yes, I believe so.

7 Q And you stopped looking for him even though you were told  
8 to hurry up and get him before Allie went to trial --

9 A We couldn't find him.

10 Q -- right?

11 You didn't stop looking for him --

12 A We couldn't find him.

13 Q -- you just couldn't find him?

14 A Yes.

15 Q You talked about an occasion where you got out of --  
16 where you went by his club; is that right?

17 A Yes.

18 Q And you got out --

19 A Yes.

20 Q -- out by his club and you walk past him --

21 A No, he walked past me.

22 Q -- and you --

23 THE COURT REPORTER: I'm sorry.

24 THE COURT: You're both doing this again.

25 You have to wait until she finishes asking the

RUSSO - CROSS - KEDIA

1 question --

2 THE WITNESS: Okay. Sorry about that.

3 THE COURT: -- and if he starts talking you need to  
4 stop because nothing is getting written down.

5 So why don't you start asking your question again.

6 MS. KEDIA: Yes, Your Honor.

7 Q Mr. Russo, you testified about going around the block  
8 outside of Mr. Scopo's club just to take a walk, you were  
9 going to smoke a cigarette; is that right?

10 A I went down to the club to see if he was around at his  
11 club figuring he didn't know who I was, so I went past it to  
12 see if he was in the club.

13 Q And when you say he didn't know who you were --

14 A Joe Scopo did not know me.

15 Q -- he didn't know -- he wouldn't recognize your face or  
16 as someone who might be a problem for him?

17 A No.

18 Q And did you know what he looked like at the time?

19 A Yes.

20 Q How did you know what he looked like?

21 A I had pictures.

22 Q I'm sorry?

23 A I seen pictures. And I seen him at his house, so I knew  
24 what he looked like.

25 Q Mr. Russo, do you recall testifying at the Guerra trial,

RUSSO - CROSS - KEDIA

1 the trial against Frank Guerra --

2 A Yes.

3 Q -- and being asked this question and giving this answer?

4 3500AR63, Your Honor, page 724.

5 You're testifying about the night of the murder and  
6 you were asked this question and gave this answer.

7 "Q Did you know where Joey was sitting in  
8 the car?

9 "A The passenger seat of the Altima.

10 "Q But you didn't know what Joey looked  
11 like?

12 "A Well, that was him, we knew --

13 "Q You know that now, but you didn't know  
14 what he looks like?

15 "A I didn't know what he looks like."

16 THE COURT: We don't know what time frame --

17 Q Do you recall --

18 THE COURT: -- that question concerns.

19 MS. KEDIA: I can back it up, Your Honor. This is  
20 the night of the murder.

21 Q Do you recall being asked those questions and giving  
22 those answers about the night of the actual murder of Joe  
23 Scopo?

24 A No, I don't.

25 MS. KEDIA: Your Honor, the several pages before --

RUSSO - CROSS - KEDIA

1 if I may just explain to the Court, the several pages before  
2 this question and answer it's making it very clear that the  
3 questions and answers pertain to the night of the Scopo  
4 murder. If I may just offer that to the Court rather than  
5 just reading the questions and answers all to the witness.

6 THE COURT: Okay.

7 BY MS. KEDIA:

8 Q Now you just testified that the night that you were out  
9 at his club walking by smoking -- going to smoke a cigarette  
10 that you knew what he looked like, right?

11 A Yes.

12 Q Do you recall being asked this question on direct  
13 examination at Mr. Guerra's trial and giving this answer?

14 THE COURT: What page number is that?

15 MS. KEDIA: Page 219, Your Honor.

16 Q Question -- and this is, let's start at line 7 --

17 "Is that where you murdered him in Queens?

18 "A Yes.

19 "Q Prior to that, when you were going out  
20 to surveil him, did you ever have a close call with  
21 him?

22 "A Yes.

23 "Q What happened?

24 "A One night me and Frankie, I don't know  
25 exactly who was there, I know Eric was there, I got out

RUSSO - CROSS - KEDIA

1 of the car because we were going by the club on 100 and  
2 First Avenue. And he had a club there, Joe Scopo, and  
3 so I knew he didn't know what I looked like and I  
4 just -- so I just told him I'll get out of the car and  
5 buy a pack of cigarettes, I'm going to look in the club  
6 to see if he's in there. And I just walked past his  
7 club, I turned the corner, I'm walking around, I'm  
8 getting ready to light a cigarette and I had a radio on  
9 me, a walkie-talkie, and they told me he's right behind  
10 me, so I shut things down. I looked behind me and I  
11 turned around and started walking back. And it was  
12 this guy Joey and this guy Sal Miciotto, "Fat Sally"  
13 that's what they called him.

14 "Q You said Sally Miciotto?

15 "A Yes.

16 "Q What was your understanding of who Sally  
17 Miciotto was?

18 "A He was a made member of the Colombos.

19 "Q What side of the war was he on?

20 "A Orena side.

21 "Q What were you using that night that you  
22 were able to communicate?

23 "A Walkie-talkies."

24 Q Do you recall being asked those questions and giving  
25 those answers?

RUSSO - CROSS - KEDIA

1 A Yes.

2 Q And it was Frank Guerra that told you, according to you,  
3 that Scopo was in the area, right? It wasn't because you  
4 recognized him; is that right?

5 A Excuse me?

6 Q It wasn't because you recognized him; is that right?

7 MR. LIFSHITZ: Your Honor, the testimony is what it  
8 is, and it's that Scopo was behind him. And if the defense  
9 wants to move in the entire Guerra transcript of this witness  
10 as an exhibit for sentencing, we don't object to that. We've  
11 provided it to the Court previously. Maybe we can cut through  
12 reading portions of the testimony and asking him if he  
13 remembers saying these things. If they are in the record  
14 they're in the record.

15 MS. KEDIA: Judge, I have no problem with that and  
16 certainly to the extent that we want to emphasize any issue  
17 with the Court, we can certainly submit that to the Court. I  
18 have no objection to that.

19 THE COURT: That's fine. If the parties agree to  
20 that it will go in as Defense Exhibit C. That's the entire  
21 transcript, correct?

22 MS. KEDIA: Yes, Your Honor.

23 (Defense Exhibit C, was received in evidence.)

24 Q Mr. Russo, we were discussing earlier you that had stolen  
25 a vehicle that you used on the night of the murder, right?

RUSSO - CROSS - KEDIA

1 A Uh-huh.

2 Q When did you steal this car?

3 A I don't remember. It's before the murder.

4 Q Do you remember --

5 A I didn't steal it. John Matera did it, got it for us.

6 Q You don't recall when?

7 A No, I don't.

8 Q Whether it was months or weeks or --

9 A No, I don't.

10 Q Do you recall what you did with it?

11 THE COURT: When?

12 BY MS. KEDIA:

13 Q After it was stolen and before the murder -- before the  
14 night of the murder, do you recall what you did with it?

15 A No. I don't.

16 Q Do you recall testifying that you had it for a while, you  
17 gave it to BF for a while?

18 THE COURT: Testifying when?

19 Q Testifying at the Guerra trial. You've only testified on  
20 one occasion, right, Mr. Russo --

21 A Yes.

22 Q -- is your testimony here?

23 Do you recall testifying at the Guerra trial that  
24 you kept the car for a while yourself, you moved it around for  
25 a while, you gave it to BF for a while, you kept it in John

RUSSO - CROSS - KEDIA

1 Matera's garage for a while?

2 A Yes.

3 THE COURT: Stricken as to form. Either you're  
4 going to ask, do you recall being asked this question or  
5 giving this answer, or else just point it out in the  
6 testimony. I don't understand what the whole point was then  
7 of moving in the entire transcript.

8 MS. KEDIA: Yes, Your Honor, I just want to know  
9 what the witness recalls here today actually.

10 Do you recall --

11 THE COURT: Then ask it the way I suggested.

12 MS. KEDIA: Yes, Your Honor. I'll just move on from  
13 this particular topic.

14 Q Now, Mr. Russo, you testified about getting a bag of  
15 guns; is that right --

16 A Yes.

17 Q -- do you recall that?

18 And this is a bag of guns that came as a result of  
19 what? How did you get this bag of guns?

20 A Got 'em from Frankie, BF.

21 Q BF?

22 A Yes.

23 Q When did you get this bag of guns?

24 A The day we were talking to Michael, that same night  
25 talking to him about getting guns.

RUSSO - CROSS - KEDIA

1 Q What same night?

2 A The night we -- the day we talked to Michael. I can't  
3 give you a date and time. My testimony was that I talked to  
4 Michael with BF, he told Smiley to get the bag, bring it to  
5 us. BF brought it to my house that night. That was my  
6 testimony.

7 Q Was Smiley present during this conversation?

8 A When we were asking Michael --

9 Q Yes.

10 A -- for the guns?

11 Q Yes.

12 A He was standing right there.

13 Q And what did you do with this bag of guns?

14 THE COURT: You know what? Both of you do the same  
15 thing. You put your hands over your mouth when you're talking  
16 and that kind of muddies up the words as they are coming out.  
17 So if both you of would refrain from putting your hands in  
18 front of your mouth, I'd appreciate it so that the words come  
19 out clearly.

20 Thank you. I'm sorry to interrupt you, but you were  
21 both doing that.

22 MS. KEDIA: Sorry, Judge.

23 THE COURT: That's okay. You do it too.

24 BY MS. KEDIA:

25 Q You testified about having a conversation with Michael

RUSSO - CROSS - KEDIA

1 and on that same day -- it's your recollection that on that  
2 same day you received a bag of guns?

3 MR. LIFSHITZ: Asked and answered multiple times,  
4 Your Honor.

5 THE COURT: I'll allow the answer. You can answer  
6 the question.

7 A Yes.

8 Q What was in the bag?

9 A Guns.

10 Q What kind of guns?

11 A There was a Mac 10, a silencer, a couple of other guns,  
12 couple of home-made silencers that were just discarded.

13 Q What other kinds of guns besides --

14 A I can't recall.

15 Q How many other guns?

16 A I don't recall.

17 Q Well, do you recall telling agents before what was in  
18 that bag?

19 A I'm sure I did.

20 Q Do you recall --

21 A I know --

22 Q -- telling them that there was a Mac 10 and a .38 snub?

23 A If that's what my testimony was, yes.

24 Q Do you recall that those were the only two guns that you  
25 said were in the bag?

RUSSO - CROSS - KEDIA

1 A I don't remember.

2 Q Let me show you what is marked as 3500AR28, page 10.

3 THE COURT: If you can tell us what that is, please,  
4 for the record.

5 MS. KEDIA: Yes. These are notes taken during a  
6 debriefing of Mr. Russo.

7 THE COURT: By the FBI agents?

8 MS. KEDIA: Yes.

9 THE COURT: Just take your time and take a look at  
10 them and let us know once you're done.

11 A I can't even read these notes.

12 THE COURT: Those are handwritten notes?

13 THE WITNESS: Yeah.

14 MS. KEDIA: They are, Your Honor.

15 THE WITNESS: They are horrible.

16 MS. KEDIA: May I approach the witness and show him  
17 the specific spot.

18 THE COURT: Yes. If you can tell us what page it  
19 is.

20 MS. KEDIA: Page 10 of 3500AR28.

21 THE WITNESS: What is this? I can't understand his  
22 writing.

23 THE COURT: Well, if you can't understand the  
24 handwriting, you can't understand the handwriting. I don't  
25 want you to guess.

RUSSO - CROSS - KEDIA

1 THE WITNESS: No, I'm not.

2 THE COURT: The handwriting is atrocious.

3 THE WITNESS: Yes, a hundred percent.

4 BY MS. KEDIA:

5 Q So, Mr. Russo, do you recall what was in the bag or you  
6 don't, how many pistols were in there --

7 A Yes --

8 Q -- or not?

9 A -- I testified to what I -- just now what I said, a  
10 silencer, Mac 10, a couple of silencers that were home-made,  
11 we just didn't even bother with them. There was a couple of  
12 other things in there, a couple of guns we didn't even bother  
13 with.

14 Q When you say you didn't bother with them --

15 A We didn't use them.

16 Q -- what does that mean?

17 So the only one that you used was the Mac 10?

18 A Yes.

19 Q And this is after you have this conversation with Eric  
20 about looking for Joey; is that right?

21 A I don't understand that question.

22 Q I'm sorry. When you get this bag of guns --

23 A Yes.

24 Q -- this is after you have this conversation with Eric  
25 about looking for Joey, that you're going to look for Joey

RUSSO - CROSS - KEDIA

1 Scopo --

2 A Possibly, I don't remember.

3 Q -- is that right?

4 You don't remember?

5 A No, I don't.

6 Q Do you remember what happened to the pistols?

7 A I don't.

8 Q Do you remember telling agents that the .38 was thrown  
9 off the Verrazano Bridge in the water?

10 A No, I don't.

11 Q Do you remember -- did you ever fire any of the guns?

12 A Yes, once by accident.

13 Q When you say by accident, explain what you mean.

14 A I had the Mac 10 in my car and I was putting it in  
15 between the seat of my car and it went off.

16 Q And it went off when you did that?

17 A Yes.

18 Q Do you remember at Mr. Guerra's trial testifying that you  
19 didn't remember ever firing any of them?

20 A No.

21 Q Do you remember being asked this question and giving this  
22 answer, Mr. Russo, on direct examination at page 209?

23 Question, line 11.

24 "Where did you store the guns?

25 "A In my house.

RUSSO - CROSS - KEDIA

1 "Q Did you ever fire any of them?

2 "A No, not that I remember."

3 A Well, I said it was an accident in my car. I remember  
4 specifically telling the agents about it. And they even asked  
5 me where the car was because they wanted to try to find the  
6 car.

7 Q Did they find the car?

8 A Not that I know of.

9 Q Do you remember giving that testimony on direct  
10 examination at the Guerra trial --

11 A I don't remember them --

12 Q -- the Guerra trial?

13 A -- asking me that on direct, no.

14 Q You don't.

15 Did you ever test fire any of the guns, meaning on  
16 purpose?

17 A No.

18 Q Do you know that people during the war were test firing  
19 the weapons that they were using on a regular basis?

20 A I've heard that.

21 Q But you didn't think that that was necessary in this  
22 particular case?

23 A No.

24 THE COURT: I'm not going to allow him to answer the  
25 question. Really, can you move on?

RUSSO - CROSS - KEDIA

1 BY MS. KEDIA:

2 Q You testified that during this time that you were looking  
3 for Joe Scopo that BF was visiting Teddy Persico in prison a  
4 lot; is that right?

5 A Was that my words, a lot?

6 Q Yes.

7 A Okay.

8 Q Do you remember that?

9 A No, I don't.

10 Q This is on direct examination two weeks ago, Mr. Russo --

11 A I said a lot --

12 Q -- do you remember --

13 A -- then that's what I said.

14 THE COURT: You have to wait until she finishes --

15 THE WITNESS: I'm sorry.

16 THE COURT: -- the question, please.

17 THE WITNESS: She's starting to get to me.

18 BY MS. KEDIA:

19 Q Well, was it a lot?

20 A A few times is a lot, I don't know.

21 Q Well, do you know --

22 A He's been up there a few times, yeah, so to me that's a  
23 lot.

24 Q You testified that he went up to there to discuss the  
25 murder, the plan to murder Joe Scopo with Teddy Persico,

RUSSO - CROSS - KEDIA

1 right?

2 A Yeah.

3 Q And that, in fact, Teddy Persico expressed a concern that  
4 you had never participated in a murder --

5 A Yes.

6 Q -- before --

7 A Well, he didn't --

8 Q -- or questioned whether he had?

9 A He never expressed that, he was just concerned if I ever  
10 did anything before.

11 Q Well, when you say did anything, what do you mean?

12 A That I was involved in a murder before.

13 Q And he wanted to make sure that --

14 A I was capable of --

15 Q -- you were capable of handling it --

16 A Right.

17 Q -- is that right?

18 A Yes.

19 Q And you said that you had done something along time ago  
20 with a guy by the name of Munchie; is that right?

21 A Yes, I did, yes.

22 Q And that wasn't really true, you were just telling him --

23 A Yes.

24 Q -- that to --

25 Now, did Mr. Guerra go see Mr. Persico again,

RUSSO - CROSS - KEDIA

1 meaning Theodore Persico, back in jail to tell him don't  
2 worry, this is okay?

3 A I don't remember.

4 Q Well, wasn't that the point of telling him about Munchie?

5 A The point? The point was for everybody not to get  
6 nervous and just relax.

7 Q Right, but --

8 A If I told Teddy, I don't remember.

9 Q Now you testified about a funeral at which you saw Teddy  
10 Persico?

11 A Uh-huh, yes.

12 Q And this is when he gave you an order to kill Joe Scopo;  
13 is that right?

14 A Yes.

15 Q And he came to the funeral from jail; is that right? He  
16 was in prison at the time?

17 A Yes.

18 Q And he was accompanied by guards?

19 A Yes.

20 Q And he met with you, Mr. Russo?

21 A He came down to pay his respects to his grandmother. We  
22 were there.

23 Q Who is we?

24 A There was a lot of people there.

25 Q Describe what happened.

RUSSO - CROSS - KEDIA

1 A He came in, he went up to the casket, we were standing  
2 there. We sat down with him, we had a discussion, and that  
3 was it.

4 Q And who was we, when you say "we"?

5 A Me, Bobby and BF.

6 Q When you had a discussion with Teddy Persico at this  
7 funeral, were there guards around him?

8 A No.

9 Q Where were you sitting?

10 A In the chapel.

11 Q Where in the chapel?

12 A I don't exactly remember where.

13 Q Was he --

14 A It was in the chapel.

15 Q Was he handcuffed or shackled?

16 A He wasn't handcuffed.

17 Q Was he shackled?

18 A I don't remember if he was shackled or not.

19 Q Well, do you remember testifying at Mr. Guerra's trial  
20 that he definitely didn't have any shackles on?

21 A No, I don't remember that.

22 Q Where did you have this conversation with Mr. Persico  
23 with you -- and when I say, Mr. Persico, Theodore Persico?

24 MR. LIFSHITZ: Asked and answered.

25 A In the chapel.

RUSSO - CROSS - KEDIA

1 Q Where in the chapel though?

2 A In the chapel.

3 THE COURT: Sustained. Asked and answered. Asked  
4 and answered. And the answer is stricken.

5 BY MS. KEDIA:

6 Q Mr. Russo, the night of the murder you testified that you  
7 pulled up on Joe Scopo as he was turning the corner toward his  
8 home; is that right?

9 A Could you repeat that, please.

10 Q The night of the murder --

11 A Yeah.

12 Q -- the night that you killed Joe Scopo --

13 A Yes.

14 Q -- you testified that you -- as he was turning the corner  
15 to go home you and others pulled up on him as they were  
16 parking; is that right?

17 A Yes.

18 Q Now it was you Eric Curcio, John Pappa, John Sparacino  
19 that day?

20 A Sparacino.

21 Q Sparacino.

22 A Yeah, uh-huh.

23 Q Anyone else?

24 A BF.

25 Q And there were how many cars --

RUSSO - CROSS - KEDIA

1 A Three.

2 Q -- that you had on that occasion?

3 A Three cars.

4 Q Now when you saw Mr. Scopo turning the corner, how is it  
5 that you recognized it to be Mr. Scopo?

6 A Eric said, there he goes --

7 Q And when you --

8 A -- that's Joey making the -- turning the corner.

9 Q And would you have recognized him otherwise?

10 A Yes.

11 Q Because you had seen him before?

12 A Yes, when he walked up behind me.

13 Q But on this particular occasion you didn't see him, you  
14 saw Eric get out --

15 A I didn't see nothing. I just saw --

16 THE COURT REPORTER: I'm sorry, I didn't hear the  
17 end of your question.

18 THE COURT: Again, please, you need to wait until  
19 she finishes the question.

20 THE WITNESS: Yes, Your Honor.

21 BY MS. KEDIA:

22 Q On this particular occasion, sir, it's not you that  
23 noticed Mr. Scopo it was Eric Curcio that pointed it out to  
24 you; is that right?

25 A Yes.

RUSSO - CROSS - KEDIA

1 Q He was in a Nissan Altima, I think you said?

2 A Yes.

3 Q Is that a car that you had seen him driving before?

4 A No.

5 Q Do you know if that was his car?

6 A No.

7 Q Now you said that as they turned the corner you got into  
8 your car -- you were outside your car; is that right?

9 A Yes.

10 Q You got into your car and you pulled up?

11 A Yes.

12 Q And you described wearing -- that you were wearing a hat  
13 and your hat flew off --

14 A Yes.

15 Q -- as gunfire exchanged, right?

16 A Yes.

17 Q Now let me ask you this, you said there were three people  
18 in the car, right?

19 A Yes.

20 Q And you knew that there were three people in the car at  
21 the time?

22 THE COURT: In which car?

23 Q I'm sorry, in Joe Scopo's car.

24 A Yes.

25 Q Did you know that there were three people in Joe Scopo's

RUSSO - CROSS - KEDIA

1 car --

2 A Yes.

3 Q -- at the time that you pulled up on him --

4 A Yes.

5 Q -- you saw the other two people?

6 A Yes.

7 THE COURT: Okay, enough already.

8 Q Did you know --

9 THE COURT: You're banging the damn nail on the head  
10 50,000 times.

11 BY MS. KEDIA:

12 Q Did you know who they were?

13 A I know who the other two are?

14 Q Yes.

15 A No.

16 Q They were strangers to you at the time?

17 A I did not know them, no.

18 Q So you testified on direct examination, Mr. Russo, that  
19 there were occasions -- there was another occasion where you  
20 pulled up on Scopo, the time you saw him outside the club and  
21 you went to light a cigarette and that you were about to pull  
22 out your pistol --

23 A Yes.

24 Q -- but there were other people walking out of their  
25 house; is that right?

RUSSO - CROSS - KEDIA

1 A Yes. Yes.

2 Q Right?

3 A Yes.

4 Q And you didn't shoot him because you didn't want to hurt  
5 any innocent people?

6 A Yes.

7 Q You testified about the same thing with respect to Billy  
8 Cuotolo, you were about to kill him one day --

9 A Yes.

10 Q -- but there were other people around?

11 A Yes.

12 Q But on this particular occasion you didn't care there  
13 were two other people in the car, you still had --

14 A They were part of that life.

15 Q How do you know that they were part of that life? You  
16 just said they were strangers?

17 A They were with him, they were part of that life.

18 Q So if they were with him, they could have been his wife,  
19 his daughter --

20 A We knew it wasn't a woman. And they shot back, so  
21 evidently they were part of that life.

22 Q They shot back but you didn't know they were going to  
23 shoot back, right?

24 A No, I didn't, but they did.

25 Q Mr. Russo, you didn't care if you killed any innocent

RUSSO - CROSS - KEDIA

1 people --

2 A Yeah, yeah --

3 THE COURT: Okay. Stop enough.

4 BY MS. KEDIA:

5 Q Now, Mr. Russo, you testified that Johnny Pappa jumped  
6 out of the car at some point, right?

7 A Yes, I did.

8 Q John Sparacino had --

9 A Sparacino.

10 Q Sparacino had already fired all of his rounds that were  
11 in the Mac 10; is that right?

12 A Yes.

13 Q And he didn't -- and he wasn't successful in shooting  
14 Joey Scopo?

15 A I guess they were all successful; he passed away.

16 Q What does that mean, that John Sparacino shot him?

17 A It was successful, yes.

18 Q Well, do you know if John Sparacino shot Joe Scopo?

19 A Yes, I did -- yes, I do, I know he shot him. He emptied  
20 out the gun through the window in the car.

21 Q He emptied out the gun, did he actually hit Joe Scopo?

22 A I can't tell you that. I wasn't there in the car with  
23 him, Joey Scopo, I was in my car with Johnny Sparacino and  
24 Johnny Pappa.

25 Q So why did John Pappa get out of the car?

RUSSO - CROSS - KEDIA

1 A I have no clue, ask John Pappa that.

2 (Continued on the next page.)

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Russo - Cross - Kedia

1      CROSS-EXAMINATION (Continued)

2      BY MS. KEDIA:

3      Q      Well, do you recall testifying at Mr. Guerra's trial that  
4      Johnny got out of the car because you told him to get out?

5      A      He said something to that effect.

6      Q      I'm sorry?

7      A      He said something to the effect which I thought he said  
8      "get out."

9      Q      Why did you tell him to get out of the car?

10     A      Because he asked me, which I told him I said "get out."  
11     And make it's done.

12     Q      Mr. Russo, do you recall testifying, I asked you a moment  
13     ago about your hat flying off, right, during the gun fire.

14     A      Yes.

15     Q      And what kind of hat was that?

16     A      A P cap.

17     Q      And what happened to your hat?

18     A      It fell out.

19     Q      What happened to it?

20     A      I don't know.

21     Q      Well, did you walk away with it that night?

22     A      No. I don't remember what happened.

23            THE COURT: Enough with the hat. Enough with the  
24            hat.

25     Q      You testified, Mr. Russo, about leaving the MAC-10 in the

Russo - Cross - Kedia

1 car.

2 A Yes, I did.

3 Q You recall that, right?

4 A Yes.

5 Q And you told John Sparacino to leave the MAC-10 in the  
6 car.

7 A Yes, I did.

8 Q Did he ask you what he should do or did you just...

9 A I just told him to leave it in the car.

10 Q And when did you tell him that, before the murder had  
11 taken place? Was it the plan that you had in effect or was  
12 this something that you just did at that moment?

13 A I don't remember exactly when I told him. I know when we  
14 got out of the car, I said leave the gun in the car. I can't  
15 remember if I told him before that moment.

16 Q And you said that you took his hat and you put your  
17 gloves in it and you put them in a bush; is that right?

18 A Gloves in it, yes.

19 Q Gloves in his hat and you put them in a bush?

20 A Yes.

21 Q And this is -- this is a hat that Sparacino was wearing,  
22 the ski mask, right?

23 A Ski mask, yes.

24 Q Were these gloves that you were wearing?

25 A No.

Russo - Cross - Kedia

1 Q Where did the gloves come from?

2 A I don't remember. I don't remember if it was my gloves,  
3 his gloves, I don't remember.

4 Q Well you remember -- wait, you testified on direct  
5 examination --

6 A That I had put gloves in a ski mask, yes.

7 Q But now you don't remember whose gloves they were?

8 A I don't.

9 THE COURT: Why don't we break here for the lunch  
10 recess. We will resume at 2:15.

11 So again, I'm just going to instruct you that you  
12 can't discuss your testimony with the government, you can  
13 discuss scheduling but nothing else.

14 All right, thank you.

15 All right, we'll come back at 2:15. Thank you.

16 (Whereupon, a recess was taken at 1:02 p.m.)

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## Proceedings

## 1 A F T E R N O O N S E S S I O N

2 (Time noted: 2:27 p.m.)

3 (In open court.)

4 THE COURT: This is the Fatico hearing continued.

5 Same appearances as this morning.

6 Thank you all for waiting, and if we're ready to  
7 continue, you can take the position that the --

8 MS. KEDIA: Thank you.

9 MR. LIFSHITZ: Your Honor, I'm sorry to ask again,  
10 but I would ask again for an estimate of how long it will be.  
11 I strongly ask that we finish the cross-examination today, in  
12 light of the fact that the direct took about two and a half  
13 hours.14 THE COURT: Well, I don't know how much more do you  
15 have? You are about 300 pages left on your notebook.

16 MS. KEDIA: No, there aren't that many, Judge.

17 THE COURT: If you didn't ask the same question  
18 three or four times we could be done, and it wouldn't be so  
19 annoying.20 MS. KEDIA: I spent the lunch break trying to cut  
21 out some things, Judge.

22 THE COURT: Good.

23 MS. KEDIA: I hope I can be done this afternoon. I  
24 have some recordings that I intend to play and I know the  
25 government agrees that we should just submit certain

## Proceedings

1 recordings and that will make it go along faster, rather than  
2 asking the witness about each of them.

3 THE COURT: Do you have transcripts of those  
4 recordings?

5 MS. KEDIA: Yes.

6 THE COURT: Okay. All right.

7 MS. KEDIA: Anything that I submit to the Court I,  
8 will give a transcript.

9 THE COURT: Okay.

10 Well, just because Ms. -- I keep wanting to use your  
11 first name first because it's such a pretty name -- Ms. Kedia.  
12 All right, even if Ms. Kedia gets done with her  
13 cross-examination, is there going to be redirect?

14 MR. LIFSHITZ: Yes. If it were now, it would be  
15 very brief. I don't expect it will be more than 10 or 15  
16 minutes.

17 THE COURT: Well, they would be entitled to do  
18 recross. We'll go as far as we can go today. I have tomorrow  
19 open so the parties should have scheduled for tomorrow.

20 MR. LIFSHITZ: We have, Your Honor.

21 THE COURT: All right. Let's go get the witness.

22 (Pause.)

23 (Witness resumes the stand.)

24 THE COURT: Welcome back, Mr. Russo. I remind you  
25 that you are still under oath. This is continued

Russo - Cross - Kedia

1 cross-examination by Ms. Kedia.

2 You may proceed when you are ready.

3 MS. KEDIA: Thank you, Your Honor.

4 CROSS-EXAMINATION (Continued)

5 BY MS. KEDIA:

6 Q Mr. Russo, when we left off, we were discussing your  
7 testimony that you took John Sparacino's ski mask and you put  
8 some gloves in it, you didn't know whose gloves they were, and  
9 that you put them in a bush near the car, right?

10 A Yes.

11 Q Do you recall testifying at Mr. Guerra's trial, at Frank  
12 Guerra's trial, that you didn't leave a ski mask anywhere,  
13 that John Sparacino left his ski mask in the car?

14 A I don't remember that.

15 Q Do you recall --

16 MS. KEDIA: Your Honor, this is 3500AR63, page 228.

17 "Q What, if anything, did you leave in the  
18 car?

19 "A We left the mask hanging in the car.

20 "Q Anything else?

21 "A I think a hat. I think Johnny might  
22 have left a hat, his ski mask.

23 "Q Was he wearing a hat?

24 "A He was wearing a ski mask."

25 MS. KEDIA: And, Your Honor, I would then go to the

Russo - Cross - Kedia

1 same 3500AR63, pages 735 and 736, beginning at line 21.

2 "Q So you already -- so you had already  
3 left the stolen car?

4 "A Yes, we did.

5 "Q Had you left the MAC-10 machine gun and  
6 Sparacino's ski mask in the stolen car?

7 "A I didn't leave a ski mask in the car, I  
8 told him to leave the machine gun in the car.

9 "Q You were sort of running this hit?

10 "A He said, 'What should I do?' I said,  
11 'Leave the machine gun and get out of the car.'

12 "Q You weren't running this hit?

13 "A No.

14 "Q You were giving the orders?

15 "A We were all part of it.

16 "Q I didn't ask that. I asked were you  
17 Anthony Russo running the hit?

18 "A No.

19 "Q You gave instructions; did you not?"

20 THE COURT: This goes beyond the questions about the  
21 ski mask.

22 MS. KEDIA: I'm going to end.

23 THE COURT: No, that's it.

24 MS. KEDIA: There's three more questions.

25 THE COURT: Well go to the ski mask and skip this

Russo - Cross - Kedia

1 other stuff.

2 MS. KEDIA: Yes, Your Honor.

3 "Q Okay, so you didn't know the ski mask  
4 was there but it was left in the car?

5 "A He had at a ski mask on. He left it in  
6 the car."

7 Do you recall giving those answers to those  
8 questions?

9 A I don't remember. I don't recall.

10 Q Now, Mr. Russo, you testified about a number of  
11 conversations that you had with Michael Persico regarding Joe  
12 Scopo, right?

13 A Excuse me?

14 Q You testified about a number of conversations that you  
15 had with Michael Persico regarding Joe Scopo; is that right?

16 A Yes.

17 Q And those are the conversations that you remember having  
18 with Mr. Persico?

19 A Which conversations --

20 Q The ones you testified to. Those are the only  
21 conversations that you have a recollection of having with  
22 Mr. Persico?

23 A About Joe Scopo?

24 Q About Joe Scopo.

25 A Yes.

Russo - Cross - Kedia

1 Q And the conversations occurred over a period of a few  
2 weeks or a few months or do you recall?

3 A I don't know. I can't recall exact time frame.

4 Q And the last conversation that you had with Michael  
5 Persico before the Scopo murder was this conversation that you  
6 testified to about gettin' it done before my brother goes to  
7 trial; is that right?

8 A Was that one of the conversations that I had with him?

9 Q Is that the last conversation you had with him before you  
10 actually got the job done?

11 A I don't -- I don't remember if that was the last  
12 conversation that you're talking about.

13 THE COURT: Well, you mean the last conversation  
14 that he had with Michael Persico about the Scopo murder?

15 MS. KEDIA: That's correct, Your Honor.

16 THE COURT: Was that the last conversation that you  
17 had with him about the Scopo murder?

18 THE WITNESS: I'm not a hundred percent sure. I  
19 know it was one of the last conversations before Joey got  
20 killed.

21 Q One of the last ones.

22 And do you recall any others?

23 A No, not really; no.

24 Q Do you recall when the last time it was that you saw  
25 Michael Persico before the murder?

Russo - Cross - Kedia

1 A I see Michael a lot.

2 Q You don't recall specifically?

3 A Nah, I don't remember the time frame. The day. The  
4 hour.

5 Q Now, Mr. Russo, did Eric Curcio tell you whether he was  
6 authorized to kill Joe Scopo?

7 THE COURT: I'm sorry, I missed the first part of  
8 the question, can you repeat it? Your voice dropped down a  
9 little bit, I couldn't hear it.

10 MS. KEDIA: I apologize, Your Honor.

11 Q Did Eric Curcio tell you whether he was authorized to  
12 kill Joe Scopo?

13 A That he was authorized? He never said that word, no.

14 Q Do you know whether this was just something that he was  
15 doing on his own with his own crew?

16 A I was told to go see him, so.

17 Was he doing it with his own crew? I don't know.

18 Q Do you know if this was something that Eric Curcio was  
19 doing on his own with his own crew?

20 A No, I don't know if he was doing it on his own, no. I  
21 don't know if he was authorized. I know he did it.

22 Q Now, at some point, Mr. Russo, I think it was 1994, the  
23 summer of 1994, Alphonse Persico comes home; is that right?  
24 He gets out of jail?

25 A I guess so, yeah.

Russo - Cross - Kedia

1 Q Well, do you recall?

2 A Yeah. He got out of jail, '94.

3 Q I'm sorry?

4 A Yeah, '94 I came out of jail.

5 Q And Eric Curcio was dying to meet Alphonse Persico; is  
6 that right?

7 A Dying to meet him?

8 Q Yes.

9 A Yeah, he really wanted to meet him.

10 Q He really wanted to meet him. He was harassing you to  
11 introduce him?

12 A Yes, he was harassing us; yes.

13 Q And he died in October of 1994, right?

14 THE COURT: Who died?

15 MS. KEDIA: I'm sorry.

16 Q Eric Persico was killed in October of 1994?

17 A Was he? In October? That's when he died? I'm not sure  
18 of the date he died.

19 Q Okay, he was killed shortly after Alphonse Persico got  
20 out of jail?

21 A I guess so.

22 Q And between the time that he died and -- between the time  
23 that Alphonse Persico got out and Eric Curcio died, he  
24 continually asked you, Anthony Russo, to introduce him?

25 A He asked me, BF, yeah.

Russo - Cross - Kedia

1 Q Now, you testified, Mr. Russo, that you were loan  
2 sharking during the 1990s and the 2000s, beginning in the  
3 '80s; is that right?

4 A In the '80s? Yeah.

5 Q Yes?

6 A Yes.

7 Q And you testified about getting money from Michael  
8 Persico?

9 A Yes.

10 Q And you said in the beginning you paid the interest once  
11 every week and after a little while, you paid it every -- the  
12 interest once a month; is that right?

13 A Yes.

14 Q Now, did you keep a loan shark book?

15 A Me personally?

16 Q Did you keep a book, yes.

17 A I had a little record, yeah.

18 Q And did you have little record throughout the time that  
19 you were loan sharking?

20 You were loan sharking up until the day you got  
21 arrested in 2011; is that right?

22 A I wasn't loan sharking when I was in jail for eight  
23 years, no. So there was a period when it stopped.

24 Q Okay. So when you were on the street, though, you were  
25 loan sharking the entire time period?

Russo - Cross - Kedia

1 A Yes.

2 Q Up until the time that you got arrested in 2011 and began  
3 cooperating, right?

4 A Uh-huh. Yes.

5 Q Did you turn over your loan shark book to the government?

6 A No.

7 Q Did you have your loan shark book?

8 A Did I have a loan shark book? I don't know. Yeah, I  
9 did.

10 Q Did they --

11 A No, I didn't. I had paper, yeah. I think got ripped up.

12 Q I'm sorry?

13 A It was ripped up and destroyed.

14 Q When was it ripped up and destroyed?

15 A Long time ago. When I got arrested.

16 Q But was it ripped up and destroyed before you got  
17 arrested or after you got arrested?

18 A Probably after I got arrested.

19 Q Well after you got arrested, within 20 to 30 minutes, you  
20 decided to cooperate; isn't that right?

21 A Right.

22 Q And after you decided to cooperate, you ripped up your  
23 loan shark book?

24 A No. No. Not at all.

25 Q Well you just testified --

Russo - Cross - Kedia

1 A I wasn't there --

2 THE COURT: Wait until he gives the answer. You  
3 asked a question.

4 And stop arguing.

5 A No, I did not rip up the book then.

6 It was ripped up later on. While I was in jail.

7 Q Did you ask somebody else to rip it up?

8 A I don't remember. I know it was gone.

9 Q And this is after you agreed to cooperate; is that  
10 correct?

11 A Yeah.

12 Q Now, you testified that you borrowed approximately 150 or  
13 \$200,000 from Michael Persico; is that right?

14 A Yes. I don't remember exact number.

15 Q Well do you recall testifying at Frank Guerra's trial  
16 that you borrowed maybe \$100,000 from Michael Persico?

17 A I don't remember that.

18 Q Do you recall being asked this question and giving this  
19 answer at the trial of Frank Guerra.

20 3500AR63, Your Honor, page 259 at the bottom,  
21 line 24.

22 "Q And approximately how many money did you  
23 borrow from Michael Persico in that time period?

24 "A A hundred, maybe a little more, a  
25 hundred thousand."

Russo - Cross - Kedia

1 A Yeah, I said it. A hundred, maybe a little more, a  
2 hundred thousand. You just read it to me.

3 Q Yes. And two weeks ago you said it was 150 or 200,000,  
4 right?

5 A The same thing. I said a hundred or more.

6 I don't know what you're trying to say.

7 Q I'm sorry go ahead, you want to finish?

8 A I finished.

9 Q When you met with agents back in, when you first started  
10 cooperating, do you recall saying that perhaps you borrowed 70  
11 to \$80,000?

12 A No, I don't remember that.

13 Q Let me show you what's been marked as 3500AR22, page 80.

14 Mr. Russo, if you could look at this document. And  
15 I direct your attention to the loan sharking 1992 to 2000. If  
16 you read the first couple of sentences, please, to yourself.

17 (Witness reviewing document.)

18 A I read it.

19 Q Mr. Russo, does that refresh your recollection that you  
20 told agents previously that it was between 70 and \$80,000?

21 A That's their -- that's their -- them writing it out, so I  
22 don't know if they heard me right or not, so. I didn't write  
23 that.

24 Q They might not have heard you right?

25 THE COURT: Will you let him finish. You know what,

Russo - Cross - Kedia

1 I'm going to stop this if you can't wait until he finishes  
2 answering.

3 MS. KEDIA: I apologize, Your Honor.

4 THE COURT: All right, I spent the entire morning  
5 doing this.

6 Finish your answer, please.

7 A I said that's not my writing so I don't know what they  
8 heard. Maybe they heard me wrong, I don't know. I didn't  
9 write that down.

10 Q Now, you said, Mr. Russo, that there was a guy by the  
11 name of Fat Lenny that you beat up on 13th Avenue. You  
12 testified to that on direct examination, right?

13 A Yes, I remember.

14 Q And he owed about \$30,000 to you?

15 A To me and Frankie, yes.

16 Q Do you recall telling agents that you and Frank did not  
17 loan more than \$3,000 per customer?

18 A Yes. 5,000.

19 Q I'm sorry? You loaned 5,000?

20 A I didn't know Frankie gave Lenny that money 'til later on  
21 when he told me. I got mad at him for lending that kind of  
22 money to 'em.

23 Q So you normally only loaned \$3,000 per customer; is that  
24 right?

25 A Yeah, around there. Depending on who you were.

Russo - Cross - Kedia

1 Q And so you didn't even know about this loan; is that  
2 right?

3 A I knew about it but I didn't know it was that much until  
4 later on when he couldn't collect it. So I went and collected  
5 it.

6 Q So this wasn't part of what was in your loan shark book?

7 A Was it in my loan shark book?

8 Q Yes.

9 A No.

10 I had 10,000 in there for Lenny.

11 Q Now, you testified about getting arrested in 2000,  
12 approximately 1999 or 2000; is that right?

13 A Yeah, around there.

14 Q And you said that you owed Michael some money at that  
15 point; is that right?

16 A Yes.

17 Q Do you know how much money you owed at that point?

18 A After I got arrested? I really don't remember exactly,  
19 the exact amount.

20 Q Did you forget the exact amount or the approximate amount  
21 between the time you testified on direct examination two weeks  
22 ago and today?

23 A Well I don't know the question you asked. Did I owe him  
24 when I met with him that day and he told me forget about the  
25 money? I don't know where you're going.

Russo - Cross - Kedia

1 Q You got arrested in 1999 or 2000?

2 A Yes. Yes.

3 Q Did you owe -- you testified you owed Michael Persico  
4 money, right?

5 A Yes.

6 Q I'm asking you how much money you owed?

7 A I think I was saying somewhere around a hundred and  
8 change. I don't remember exactly, you know.

9 Q You don't remember two weeks ago saying it was 60 or  
10 \$70,000?

11 A A piece. Between the both of you us each, we come out  
12 over a hundred thousand.

13 Q Mr. Russo, do you recall discussing monies that were owed  
14 to Alphonse Persico with Thomas McLaughlin?

15 A No.

16 Q Do you recall discussing with Thomas McLaughlin that  
17 Alphonse Persico -- that you owed Alphonse Persico and that he  
18 allowed you not to repay the loan?

19 THE COURT: I'm sorry, can you repeat the question  
20 or can you read that question back to me?

21 (Whereupon, the record was read.)

22 THE COURT: Can you rephrase the question.

23 MS. KEDIA: Yes, Your Honor.

24 Q Mr. Russo, do you recall discussing with Thomas  
25 McLaughlin money that you owed to Alphonse Persico which

Russo - Cross - Kedia

1 Alphonse Persico forgave?

2 A No. But I'm sure you'll remind me. I don't remember.

3 Q Well, let me show you...

4 And I'm marking as Defendant's E and ET.

5 Mr. Russo, perhaps I can first show you the  
6 transcript and see if it will refresh your recollection.

7 THE COURT: Can you tell me what this exhibit is,  
8 please?

9 MS. KEDIA: Yes, it's a transcript of a conversation  
10 between Mr. Russo and Thomas McLaughlin on October 1st, 2009,  
11 Your Honor.

12 (Witness reviewing document.)

13 A Okay, I read it.

14 Q You don't recall that, Mr. Russo?

15 A No.

16 MS. KEDIA: Can we play it?

17 Q Mr. Russo, can you put your headphones on so you can hear  
18 it?

19 THE COURT: We took the headphones to recharge them.  
20 Hang on a second.

21 Okay, if you want to press "play".

22 (Audio recording played.)

23 BY MS. KEDIA:

24 Q Mr. Russo, having heard the recording, does that refresh  
25 your recollection that you had this discussion with Thomas

Russo - Cross - Kedia

1       McLaughlin?

2       A       I don't remember this whole conversation, no, I don't. I  
3       can remember some of these things but not all of them. Some I  
4       can't even hear that good. I can read it pretty good.

5       Q       I'm sorry?

6       A       I said I didn't hear the whole conversation that good but  
7       I could read it pretty good.

8       Q       But you don't recall it?

9       A       I don't recall a lot of this conversation.

10      Q       Do you recall -- withdrawn.

11                  You testified about a time that you had a load of  
12       stolen video games that you were going to buy from some guy  
13       named Spider?

14                  THE COURT: Can you just clarify which testimony  
15       you're talking about, please?

16                  MS. KEDIA: Yes, Your Honor.

17      Q       You testified on direct examination here that you -- that  
18       there was a load of stolen video games that you were going to  
19       buy from some guy named Spider; is that right?

20      A       Yes.

21      Q       And do you recall when that was?

22      A       '90s. I don't remember. '95, about '6. I'm not sure.

23      Q       When you went on -- after you started cooperating --  
24       withdrawn.

25                  You testified about putting -- that your plan was --

Russo - Cross - Kedia

1 you didn't end up buying these stolen video games, right?

2 A No.

3 Q But your plan was that you were going to put them in the  
4 garage of a bus company in Coney Island that was owned by  
5 Michael; is that right?

6 A By Michael the bus company was owned? Yeah, I guess so.

7 Q Well, do you recall testifying --

8 A Yes. Yes.

9 Q Now, when you started cooperating, soon after you started  
10 cooperating, you went on a drive around with the agent and you  
11 pointed out this garage that you were going to put in -- put  
12 this load of stolen video games in.

13 Do you recall that?

14 A Yes.

15 Q And this stolen video games you pointed out an address at  
16 27 West -- 2733 West 15th Street.

17 Do you recall that?

18 A Is that the address I pointed out? Yeah. I showed him  
19 some place, yes, in Coney Island.

20 Q Well do you recall where you showed him or you don't?

21 A I mean --

22 THE COURT: Do you recall the address?

23 THE WITNESS: No, I don't recall the address, but...

24 Q Let me show you what's previously been marked as  
25 3500AR22, pages 90 and 99.

Russo - Cross - Kedia

1 THE COURT: 90? I'm sorry, 90 and?

2 MS. KEDIA: 99.

3 Q Mr. Russo, I'm going to show you page 99 of 3500AR22.

4 Do you recall showing agents this spot, the garage?

5 A It looks like, yes.

6 Q And do you recall -- I'm going to show you page 90,  
7 number five.

8 Do you recall that the address of this was 2733 --

9 THE COURT: Does that refresh your recollection is  
10 the question.

11 THE WITNESS: Yes. It refreshes. Yes.

12 Q Do you know a person by the name of Emil Caucig?

13 A No.

14 Q Ever heard that name when you were with Michael Persico  
15 or with any of the people that you were --

16 A No.

17 Q -- hanging around in 1993, '94, '95, that time period?

18 A What was the name again, Emil?

19 Q Emil Caucig?

20 A No.

21 Q Do you know if he's the person who owned that property?

22 A No, I don't know that.

23 Q From 1980 to 2002?

24 A No, I do not know that.

25 Q Now, Mr. Russo, you testified about a time period that

Russo - Cross - Kedia

1 you got out of jail after serving about seven years or so in  
2 the 2000s; is that right?

3 A Yes, I was released in 2007.

4 Q And you were released, in fact, on June 26th of 2007,  
5 right?

6 A No, I don't believe it was June 26th.

7 Q You don't believe it was June 26th?

8 A I don't remember. I thought it was July. All right, but  
9 you must have the right answer there, not me.

10 Q Let's say approximately June or July is your  
11 recollection.

12 A Yeah, around there; yeah.

13 Q And you served about 11 months on supervised release; is  
14 that right, you said?

15 A Yes. Yeah.

16 Q So that would have put you off of supervised release in  
17 the mid-2008?

18 A November.

19 Q You were off of supervised release in November?

20 A November 2008, yeah.

21 Q So you served more than 11 months of supervised release,  
22 Mr. Russo?

23 A I remember getting off in November 2008.

24 Q When you -- after you got out of jail, you said you had a  
25 conversation with Andre and Carmine Persico.

Russo - Cross - Kedia

1           That's Teddy, Jr.'s brother; is that right?

2   A   Carmine, yes.

3   Q   And Andre is somebody that's related to them or a friend?

4   A   A friend.

5   Q   And Andre and Carmine Persico, Jr. told you that you were  
6 getting inducted; is that right?

7   A   Yes.

8   Q   Now, you testified that soon after you got off of  
9 supervised release, Michael asked to see you; is that right?

10   A   After I was off of supervised release? Yes, I seen  
11 Michael.

12   Q   You testified that he asked to see you; is that right?

13   A   I said, yes, I want to see Michael.

14   Q   And you went to see Michael about opening up a business;  
15 is that right?

16   A   That and other things, yes.

17   Q   You went to see him about a construction business; is  
18 that right?

19   A   Yes.

20   Q   And at this point in time, were you contemplating opening  
21 up a business with BF, Frank Guerra?

22   A   Yes.

23   Q   And the reason that you waited 'til you were off parole  
24 is because you couldn't see BF until you were off parole; is  
25 that right?

Russo - Cross - Kedia

1 A No, I was seeing BF before I was off parole.

2 Q So why did you wait until you were off parole --

3 A Because I couldn't see Michael. He didn't want to see me  
4 'til after I got off parole.

5 Q Oh, Michael didn't want to see you?

6 A Yeah.

7 Q Michael and you understood was not -- he had no  
8 convictions or anything, right, it wasn't --

9 A No.

10 Q Now, you testified about that there came a point in time  
11 where you were, in fact, inducted, correct?

12 A Yes.

13 Q Became a made member of the Colombo family.

14 Do you recall when that was?

15 A Yes.

16 Q When was it?

17 A 2009, February.

18 Q And you opened up a car -- the car detailing business  
19 around that same time?

20 A Something. Yeah, some time around there; yeah.

21 Q Well, do you recall when it was?

22 A I'm trying to figure that one out right now.

23 Sometime after that, yeah.

24 Q And you testified about wanting to go into the valet  
25 parking business, right?

Russo - Cross - Kedia

1 A Uh-huh.

2 THE COURT: I'm sorry, you need to answer.

3 THE WITNESS: Yes. I'm sorry.

4 A Yes.

5 Q Now, you opened up the car detailing business with your  
6 friend Frank Guerra; is that right?

7 A Yes.

8 Q And you -- and you testified about using the garage that  
9 was owned by Michael; is that right?

10 A Yes.

11 Q And this was a garage that you rented, right, you had to  
12 pay rent?

13 A No, we didn't paid rent after -- in the beginning, no.

14 Q Let me show you AR -- let me ask you this:

15 You didn't pay rent or you don't recall if you paid  
16 rent?

17 A We didn't pay in the beginning, no.

18 Q Do you remember telling agents that you paid rent each  
19 month?

20 A Yeah, after a couple of months we started paying rent.

21 Q So the first month or two there was no rent; is that  
22 right? And then you started paying rent?

23 A Yes.

24 Q How much rent did you pay?

25 A I don't remember.

Russo - Cross - Kedia

1 Q And is this a car detailing business that you had going  
2 up until you were arrested in 2011?

3 A Yes.

4 Q Now, when did you try to go into the valet parking  
5 business, before you went into the car detailing business or  
6 after?

7 A I'm not sure.

8 Q When you testified about going to discuss potentially  
9 opening a valet parking business with your friend, Anthony  
10 Stropoli; is that right?

11 A Yes.

12 Q And do you recall if it was around the same time frame,  
13 years before, years after?

14 A Around the same time frame.

15 Q I'm sorry?

16 A Not years before, around the same time frame.

17 Q And you learned from your friend, Anthony Stropoli, that  
18 Anthony Preza was in this valet parking business?

19 A Anthony who?

20 Q Preza.

21 A Preza, that's his last name?

22 Q Well, did you learn that?

23 A Yes.

24 Q Did you know Anthony Preza?

25 A I met him.

Russo - Cross - Kedia

1 Q You met him when?

2 A When I came home.

3 Q Did you meet him before you went to talk to him about a  
4 valet parking business?

5 A I don't really recall what time about. It might have  
6 been the first time. I don't know.

7 Q And during this meeting, you said that Michael Persico  
8 was at this meeting; is that right?

9 A In the diner? Yes.

10 Q You say "in the diner."

11 This was a meeting that you had about discussing  
12 opening up a valet parking business?

13 A Well, I went there to meet Anthony, yes.

14 Q To get pointers --

15 A Pointers from who?

16 Q Anthony Preza.

17 A Yes.

18 Q Because he was in the business?

19 A Yes.

20 Q And you were offered a percentage for referring customers  
21 rather than --

22 A Yes.

23 Q -- rather than starting your own business?

24 A Yes.

25 Q And you declined, right?

Russo - Cross - Kedia

1 A Probably. I don't remember.

2 Q Now, Mr. Russo, you have, as we discussed before, there  
3 were a number of conversations that you had between 2009 and  
4 2011 with Mr. McLaughlin and Mr. Tagliavia which were recorded  
5 by both of those individuals, right?

6 A A lot of conversations.

7 Q And you talked about criminal activity by you and by BF;  
8 is that right?

9 A Yes.

10 Q And you talked about criminal activity by Teddy Persico  
11 and by Allie Persico, right?

12 A I don't remember if I talked about Ali to anybody about  
13 criminal activity. I might have. I don't remember.

14 Q Do you recall telling them about how Anthony Stropoli was  
15 acting as a captain for Teddy Persico in the family?

16 A And who was I talking to?

17 Q Thomas McLaughlin and Peter Tagliavia.

18 A Probably, yeah.

19 Q And did you -- and that you were replacing Teddy  
20 Persico -- you were replacing Anthony Stropoli as Teddy  
21 Persico's acting captain in 2010?

22 THE COURT: Is that the question?

23 MS. KEDIA: Yes, Your Honor.

24 THE COURT: It's not a question, it's a statement.

25 Q When you spoke to -- do you recall speaking to Thomas

Russo - Cross - Kedia

1       McLaughlin and Peter Tagliavia about how you were going to be  
2       replacing Anthony Stropoli and Teddy --

3                  THE COURT: Is the question whether he actually  
4       spoke to them about that?

5   Q       Did you speak to them about that? First I can ask you  
6       that, sure.

7   A       Did I speak to him about me taking over for Anthony?

8   Q       Yes?

9   A       As acting captain?

10   Q       Yes.

11   A       Yes, I believe so.

12   Q       Did you speak to them about wanting to get your son  
13       inducted into the family?

14   A       I probably did. Yes.

15   Q       Did you speak to them about wanting to go rob millions in  
16       a safe from a guy on Todt Hill?

17   A       I believe we had a conversation like that, yeah.

18   Q       And, Mr. Russo, you spoke to them also about potentially  
19       wanting to cooperate; is that right?

20   A       I don't remember that.

21   Q       Well, do you remember an agent coming to your home about  
22       two weeks before you were arrested?

23   A       Yes.

24   Q       And who was that agent?

25   A       Scott Curtis.

Russo - Cross - Kedia

1 Q And do you recall speaking to Mr. McLaughlin and  
2 Mr. Tagliavia about Scott Curtis coming to your home?

3 A I remember talking to Tommy about it.

4 Q You don't remember if Mr. Tagliavia was there or not?

5 A No, I don't.

6 Q Do you remember what was discussed?

7 A Not everything, no.

8 Q Did you speak to Mr. McLaughlin about how the agent,  
9 Mr. Curtis, told you don't be the fall guy for the Persicos?

10 A I don't remember that exact statement, no.

11 THE COURT: What is the relevance of all this?

12 MS. KEDIA: Judge, if I could ask that the witness  
13 be excused, I'll be happy to talk to you about it.

14 THE COURT: Yes, can I just ask you to step out for  
15 a minute. We'll call you right back.

16 (Whereupon, the witness left the room.)

17 THE COURT: The witness is no longer present.

18 What is the relevance of all of this?

19 MS. KEDIA: The relevance of this, Your Honor, is  
20 this witness' state of mind, which is that he understands --

21 THE COURT: As to what?

22 MS. KEDIA: -- an agent --

23 THE COURT: State of mind as to what?

24 MS. KEDIA: As to the fact that the government wants  
25 to get anyone with the last name Persico. Wants to indict

Russo - Cross - Kedia

1 them. Wants evidence on them.

2 THE COURT: So what?

3 MS. KEDIA: It shows --

4 THE COURT: He's already cooperating.

5 MS. KEDIA: No, Judge, this is at a time period  
6 before he's cooperating.

7 This is in the weeks before he begins cooperating.  
8 He knows who they want him to implicate. That's the  
9 relevance.

10 There's specific conversations about Michael Persico  
11 and there are conversations about the Persicos in general and  
12 how the government and this agent in particular --

13 THE COURT: So you had the conversation between him  
14 and the agent about what it is that they discussed. Who cares  
15 what he talks about with anybody else?

16 MS. KEDIA: That's fine. I'll ask it that way to  
17 begin with, Judge.

18 THE COURT: I mean, you already have  
19 cross-examination about the issue in connection with a bunch  
20 of different Frankies and Franks all over the place in here.

21 MR. LIFSHITZ: I believe it was Sparaco, Your Honor.

22 THE COURT: Yes, exactly. Sparaco. Exactly.

23 MS. KEDIA: Yes, Judge.

24 THE COURT: So we're there.

25 MS. KEDIA: Yes, Your Honor. That was a

Russo - Cross - Kedia

1 conversation that was had in 2010. We're talking about a  
2 conversation that he had just within two weeks of his being  
3 arrested and beginning to cooperate.

4 I'm perfectly happy to submit again -- I cannot ask  
5 the witness more questions along this line, I can just  
6 amend --

7 THE COURT: You know, every other question is: And  
8 did you talk to this one? Enough already. There's no jury  
9 here.

10 MS. KEDIA: I'm well aware.

11 THE COURT: I think I get the point. Bring the  
12 witness in.

13 (Witness resumes the stand.)

14 THE COURT: The witness is back.

15 Welcome back, sir. I'm just going to remind you  
16 again that you're still under oath.

17 You may inquiry when you're ready, Ms. Kedia.

18 MS. KEDIA: Thank you, Your Honor.

19 Q Mr. Russo, do you recall discussing with Mr. McLaughlin  
20 or Mr. Tagliavia that Mike Persico is a legitimate  
21 businessman?

22 A Yes, I think I remember that; yeah.

23 Q And that he's got a lot of legitimate businesses and he  
24 just got wrapped up in this because people dropped his name?

25 Do you recall that?

Russo - Cross - Kedia

1 A Not all that I don't remember, but I remember talking  
2 about legitimate businesses.

3 Q Do you recall saying that he's truly legitimate and the  
4 Feds think he's doing other things but the guy has nothing to  
5 do with anything?

6 A I don't recall that.

7 Q Let me show you what I'm marking as Defendant's E and ET.

8 (Continued on next page.)

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Russo - Cross - Kedia

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2 THE COURT: You have two Defense Exhibits, D and DT,  
3 I assume D is the audio recording?

4 MS. KEDIA: D is the audio recording.

5 THE COURT: You did not move that into evidence, did  
6 you want it to be moved into evidence?

7 MS. KEDIA: I do, Your Honor.

8 THE COURT: Any objection to it?

9 MR. LIFSHITZ: No, Your Honor.

10 THE COURT: It's D and DT -- well, obviously the  
11 transcript is not evidence, it's --

12 MS. KEDIA: An aid.

13 THE COURT: An aid, thank you.

14 And the same with E and ET?

15 MS. KEDIA: Yes, Your Honor.

16 THE COURT: Any objection.

17 MR. LIFSHITZ: No, Your Honor.

18 THE COURT: Okay.

19 (Defense Exhibit D and DT, was received in  
20 evidence.)

21 (Defense Exhibit E and ET, was received in  
22 evidence.)

23 MS. KEDIA: Can we play it?

24 (Audio played.)

25

RUSSO - REDIRECT - LIFSHITZ

1 BY MS. KEDIA:

2 Q Mr. Russo, was that your voice on that recording?

3 A Yeah.

4 MS. KEDIA: I have nothing further.

5 THE COURT: Why don't we take our mid-afternoon  
6 break at this point. We will come back in about 15 minutes.  
7 That's about 3:35. And the witness can take a break as well.

8 THE WITNESS: Thank you.

9 THE COURT: Okay.

10 (Recess.)

11 THE COURT: Is the government going to have any  
12 redirect examination?

13 MR. LIFSHITZ: Yes, a brief redirect, if I may, Your  
14 Honor.

15 THE COURT: Okay, let's bring out the witness.

16 MR. LIFSHITZ: Thank you.

17 THE COURT: Welcome back, sir. This is a Fatico  
18 hearing continued, the same appearances as this morning.  
19 Mr. Russo is back on the stand.

20 I remind you, sir, that you are still under oath.  
21 This is redirect examination by Mr. Lifshitz. You may proceed  
22 when you are ready.

23 MR. LIFSHITZ: Thank you, Your Honor.

24 REDIRECT EXAMINATION

RUSSO - REDIRECT - LIFSHITZ

1 BY MR. LIFSHITZ:

2 Q Good afternoon, Mr. Russo.

3 A Good afternoon.

4 Q Do you recall being asked on cross-examination about  
5 whether you have told lies in your lifetime?

6 A Yes.

7 Q Is it true that before you started cooperating in 2011  
8 you told lies?

9 A Yeah.

10 Q After you began cooperating in 2011, did you lie to the  
11 government or the Court?

12 A No.

13 Q And after you began cooperating in 2011, what did you  
14 think would happen to you if you lied to the government or the  
15 Court?

16 A My agreement would be tossed out.

17 Q And what sentence could you face?

18 A Life in prison.

19 Q Do you recall being asked questions on cross-examination  
20 about a conversation in which you refer to Michael Persico as  
21 legitimate?

22 A Yeah.

23 Q Was it true that Michael Persico had legitimate  
24 businesses?

25 A A hundred percent, yeah.

RUSSO - REDIRECT - LIFSHITZ

1 Q Did he also participate in crimes?

2 A Yes, he did.

3 Q Would it have been a good idea for you to discuss Michael  
4 Persico's crimes with Peter Tagliaavia?

5 A No, not at all.

6 Q Why not?

7 A 'Cause I never would have talked bad about Michael to  
8 Peter, he was just my -- he was just around me, he was an  
9 associate. He did nothing. He was my driver and he did  
10 errands for me. Why would I tell him anything about Michael?

11 Q Who are you referring to when you say "he"?

12 A Peter.

13 Q Thank you.

14 Do you recall being asked on cross-examination about  
15 a conversation you had with Frank Sparaco about agents being  
16 interested in Michael Persico?

17 A You talking about when I was in prison?

18 Q Yes.

19 A Yes.

20 Q You recall that conversation, correct?

21 A Yes.

22 Q Just to clarify, in that conversation -- strike that.

23 When you testified about that conversation, were you reporting  
24 information agents had given to you, or were you reporting  
25 what Sparaco had told you agents said to him?

RUSSO - REDIRECT - LIFSHITZ

1 A I was telling him -- I was talking about what Sparaco had  
2 told me that the agents told him.

3 Q Do you recall being asked additional questions on  
4 cross-examination about whether you believed that the agents  
5 wanted you to implicate Michael Persico in crimes?

6 A Did I believe they wanted me to implicate him?

7 Q Do you recall being asked on cross-examination  
8 questions --

9 A Yes.

10 Q -- along those lines?

11 After you began proffering with the government in  
12 2011, did you provide information only about the Scopo murder  
13 or also about other murders?

14 A Other murders.

15 Q Who is Michael Devine?

16 A He was a club owner.

17 Q Did you provide information about what happened to him?

18 A Yes, I did.

19 Q What happened to him as far as you know?

20 A He was killed.

21 Q And as far as you know who killed him?

22 A Frankie Sparaco.

23 Q Did anyone help him?

24 A Yes.

25 Q Who?

RUSSO - REDIRECT - LIFSHITZ

1 A Frankie BF, Robert Tarantola, Fifi that's what I  
2 understand.

3 Q How did you come to learn about who participated in that  
4 murder?

5 A That I learned through BF.

6 Q Frank Guerra?

7 A Yes.

8 Q Did you tell the government what you knew about that  
9 murder?

10 A Yes, I did.

11 Q Did Guerra tell you why they killed Michael Devine?

12 A Yes.

13 Q What did he tell you about that?

14 A Because he was having an affair with Allie Persico's  
15 wife.

16 Q Alphonse Persico's wife?

17 A Yes.

18 Q Did you ever tell the government that Michael Persico was  
19 involved in that murder?

20 A No, not at all.

21 Q Have you known someone by the name Steve Mancuso or  
22 Mancusi?

23 A Yes.

24 Q Who was he?

25 A He was an associate, Colombo family.

RUSSO - REDIRECT - LIFSHITZ

1 Q What happened to him?

2 A He was killed.

3 Q How did you learn about that?

4 A That I learned from Frankie Sparaco, from BF.

5 Q Each of them told you about it?

6 A Yes.

7 Q What's your understanding of what happened to Mancusi?

8 A Frankie killed him.

9 Q Frankie who?

10 A Sparaco.

11 Q Did he tell you why?

12 A He said he was doing something with drugs.

13 Q And is this the Frank Sparaco who you said was a dear  
14 friend of Michael Persico?

15 A Yes.

16 Q Did you ever tell the government that Michael Persico had  
17 anything to do with that?

18 A No, not at all.

19 Q When you began proffering with the government in 2011,  
20 did you provide information only about Michael Persico or also  
21 about other people in organized crime?

22 A Everybody, everybody that I had met.

23 Q Did you provide information about anyone in the Colombo  
24 family administration?

25 A Yes.

RUSSO - REDIRECT - LIFSHITZ

1 Q Who?

2 A Andrew Russo --

3 Q Who are some of the people you recall?

4 A Andrew Russo, Benji was the underboss, Richie Fusco.

5 Q Did you provide information about any captains to the  
6 government?

7 A Yes.

8 Q Who were some of the captains you told the government  
9 about?

10 A Lollipop. I don't know his whole name. Dennis DeLuccia,  
11 Reynolds. I can't think offhand right now.

12 Q Did you provide information about Teddy Persico?

13 A Yes.

14 Q What was his position in the Colombo family?

15 A He was a captain.

16 Q Did you provide information about any soldiers in the  
17 Colombo family?

18 A Yes, a lot of them, yes.

19 Q Who were some of the soldiers you recall providing  
20 information about?

21 A Well, Joey Savarese, Larry, John Maggio, Manny, I don't  
22 know his last name, Danny Capalbo.

23 Q Did you provide information about any people you  
24 understood to be associates of the Colombo family besides  
25 Michael Persico?

RUSSO - RECROSS - KEDIA

1 A Yes.

2 Q Who were some of the associates you provided information  
3 about?

4 A Jim Rogie was a bookmaker, John, his brother-in-law, a  
5 bunch of guys. I just can't remember offhand.

6 Q When you proffered with the government did you feel any  
7 pressure to give information about Michael Persico?

8 A No, not at all.

9 Q Do you want to be here today testifying against Michael  
10 Persico?

11 A No, not really.

12 Q Why not?

13 A 'Cause I just don't want to be here. I'm, you know.

14 Q Why not?

15 A Because I'm afraid of what he could have done to me.

16 MR. LIFSHITZ: No further questions, Your Honor.

17 THE COURT: Any recross?

18 MS. KEDIA: Yes, Your Honor.

19 RECROSS EXAMINATION

20 BY MS. KEDIA:

21 Q Mr. Russo, you were asked just now about conversations  
22 that you had with Peter Tagliavia, right? Yes?

23 A Yes.

24 Q And he and Tommy McLaughlin were related; is that right?

25 A I believe they were brother-in-laws, yes.

RUSSO - REROSS - KEDIA

1 Q And the two of you were -- I'm sorry, the three of you  
2 were around each other all the time talking about criminal  
3 activity --

4 A A lot.

5 Q -- between 2009 and 2011 --

6 A Yes.

7 Q -- right?

8 Do you know how many recordings Peter Tagliavia and  
9 Tommy McLaughlin made of you talking about the criminal  
10 activity --

11 THE COURT: Sustained. Beyond the scope.

12 Q Mr. Russo, you testified about all kinds of people  
13 committing crimes, you discussed all kinds of people  
14 committing crimes with the two of them, right? Yourself, is  
15 that right?

16 A Yes.

17 MR. LIFSHITZ: Objection to form.

18 THE COURT: Sustained.

19 Q Mr. Russo, did you discuss --

20 THE COURT: Keep in mind that your cross-examination  
21 is restricted to what was discussed on redirect.

22 MS. KEDIA: I understand, Your Honor.

23 Q Mr. Russo, did you discuss with Peter Tagliavia and Tommy  
24 McLaughlin criminal activity that you and many, many other  
25 people committed?

RUSSO - REROSS - KEDIA

1 A Yes.

2 Q And you even discussed the Scopo murder, didn't you?

3 A I believe so, yes.

4 Q In fact, you discussed being involved in it, with Guerra  
5 right, Frank Guerra?

6 A Yes.

7 Q Who was at the time your best friend --

8 A Uh-huh.

9 Q -- is that right?

10 A Yes.

11 Q You do recall that?

12 A Yes.

13 MS. KEDIA: Thank you. I have nothing further.

14 THE COURT: Anything further on redirect?

15 MR. LIFSHITZ: No, thank you, Your Honor.

16 THE COURT: Thank you, sir, you may step down.

17 You're excused.

18 (Witness excused.)

19 THE COURT: The witness is no longer in the room,  
20 does the government have any other additional evidence to  
21 present today?

22 MR. LIFSHITZ: Your Honor, just the evidence  
23 referred to in our letter.

24 THE COURT: Let's discuss these letters that came at  
25 the 11th hour yesterday, despite the fact we had a two-week

RUSSO - RECROSS - KEDIA

1 hiatus from when you broke from this hearing the last time.

2 I gather that the defense saw the filing that was  
3 made by the government yesterday, correct?

4 MS. KEDIA: Yes, Your Honor, we did.

5 THE COURT: So what's your position on the  
6 government's request.

7 MS. KEDIA: Your Honor --

8 THE COURT: If you could sit and speak into the  
9 microphone.

10 MS. KEDIA: Certainly.

11 THE COURT: We could hear each other a lot better.  
12 That would be great, thank you.

13 MS. KEDIA: Your Honor, I had prepared a number of  
14 exhibits that I intended to introduce through the agent and  
15 cross examine him about, I don't know that that is necessary  
16 that I need to actually cross examine Mr. Adam about them, but  
17 there are a number of exhibits that I would like to also  
18 submit to the Court if the Court is amenable to that.

19 Our thought is -- obviously, there are a number of  
20 exhibits that I need to explain the import of to the Court, so  
21 I had discussed this with the government after seeing its  
22 letter that it submitted yesterday and our thought was that we  
23 would submit briefs explaining the import of the various  
24 exhibits that we would like the Court to consider in making  
25 its determination. And if the Court is amenable to that we

RUSSO - REROSS - KEDIA

1 will just do it in a submission in which case I don't have an  
2 objection to the government simply submitting the evidence  
3 rather than calling the agent.

4 THE COURT: How are we supposed to know what the  
5 significance of any of this is without having a live body to  
6 talk about it --

7 MR. LIFSHITZ: Your Honor, first of all --

8 THE COURT: -- besides having the lawyer's  
9 interpretation about it? I mean that has about the same kind  
10 of help as what the parties did in their previous submissions  
11 attaching transcripts from the Guerra trial and then arguing  
12 credibility of the witness. I have to see the witness to  
13 determine credibility.

14 There's a certain level of sloppiness with which I  
15 am not willing to abide on both sides for the sake of  
16 expediency of the parties.

17 That still doesn't tell me where you stand,  
18 Ms. Kedia, with respect to the government's request.

19 MS. KEDIA: Your Honor, I don't object to the  
20 government --

21 THE COURT: Sit. Why do I have to keep repeating my  
22 instructions to people --

23 MS. KEDIA: I apologize.

24 THE COURT: -- for God's sake.

25 MS. KEDIA: Your Honor, I don't have a problem with

RUSSO - REROSS - KEDIA

1 the government's suggestion that we do this by submission  
2 rather than by calling the agent, however, if the Court is not  
3 accepting of that, I am perfectly happy for the agent to be  
4 called and cross examine the agent about this.

5 MR. LIFSHITZ: Your Honor, may I be heard briefly?

6 THE COURT: Yes.

7 MR. LIFSHITZ: First of all, I'm sorry for the late  
8 submission. The exhibits that we are referring to in our  
9 submission are largely surveillances that were conducted in  
10 the 1990s. Our original thought was to put them in through  
11 our case agent, he was not the case agent at the time, he  
12 could say these were exhibits admitted in the Guerra trial and  
13 we could have read out loud portions of the testimony.

14 THE COURT: He wasn't the agent at the time.

15 MR. LIFSHITZ: Correct, Your Honor.

16 THE COURT: Where is the agent who was the agent at  
17 the time?

18 MR. LIFSHITZ: Your Honor, we were never intending  
19 to call all the agents from the 1990s to put in the  
20 surveillances at the Fatico hearing.

21 THE COURT: How is the case agent who you are  
22 planning to call qualified to talk about any of this?

23 MR. LIFSHITZ: Well, Your Honor, that's my point.  
24 Having him direct and --

25 THE COURT: Are the other agents alive?

RUSSO - RECROSS - KEDIA

1 MR. LIFSHITZ: Yes.

2 THE COURT: Are they still working for the bureau?

3 MR. LIFSHITZ: Some are, some aren't. A lot of them  
4 are retired NYPD detectives. Your Honor, for the sake of the  
5 Fatico hearing we weren't intending to try the entire Scopo  
6 murder. We've provided the defense along time ago with the  
7 list of our witnesses, which was always Anthony Russo and  
8 Agent Adam. There was never any objection to us putting in  
9 exhibit through the agent.

10 THE COURT: How is the agent familiar with any of  
11 the exhibits?

12 MR. LIFSHITZ: By virtue of being the case agent on  
13 the Guerra trial. He doesn't have personal knowledge about  
14 the surveillances that were conducted in the 1990s.

15 THE COURT: Did he testify in the Guerra trial?

16 MR. LIFSHITZ: Not about these exhibits.

17 THE COURT: I'm not saying that you have to try the  
18 entire Scopo murder here, but to the extent that you want to  
19 provide any corroboration of the witness who just testified,  
20 then I need to have some indicia of reliability.

21 So you've got a picture that allegedly depicts the  
22 defendant that was taken what, 13 years ago, and I'm supposed  
23 to, based on my looking at Mr. Persico now, be able to tell  
24 that that indeed is the person in the picture. I don't know  
25 what the quality of the surveillance picture is. I don't know

RUSSO - REROSS - KEDIA

1 what's in there other than whatever is in some log entry.

2 MR. LIFSHITZ: Your Honor, with respect to that one,  
3 the agent who took the picture I believe identified him as an  
4 unidentified male.

5 THE COURT: Exactly my point. Which you say is that  
6 the unknown man, the younger of the two, is the defendant.

7 MR. LIFSHITZ: That's our argument, Your Honor.  
8 There is not a live witness who could prove to you that it is.  
9 We're asking the Court to look at the picture and reach that  
10 conclusion but that's all we can do with that one. So having  
11 Agent Adam testify about it wouldn't advance the ball.

12 THE COURT: So with respect to the 1997  
13 surveillance, why couldn't you have shown -- if there was no  
14 contesting the foundation for the exhibit by the defense, why  
15 couldn't you have shown that through Mr. Russo? Because  
16 apparently he's one of the people depicted in the video. He  
17 would have been qualified to testify about who was in that  
18 picture and where they were and everything else.

19 MR. LIFSHITZ: Your Honor, we generally don't put in  
20 recordings, audio or video, through a witness who didn't make  
21 them because we don't want him to be accused of conforming  
22 testimony to fit evidence that was gathered outside of him.

23 THE COURT: But you don't want to put the agents on  
24 either.

25 MR. LIFSHITZ: That would turn this into a very long

RUSSO - REROSS - KEDIA

1 proceeding. I don't think --

2 THE COURT: You know what? I don't care if it takes  
3 two weeks. I am the trier of fact here. I am the one who is  
4 going to sentence Mr. Persico. I do not appreciate the  
5 attempt of the parties to pigeon hole me into only  
6 considering the sentencing guidelines, which were made  
7 advisory over 11 years ago. Because that's what's happening  
8 here. And both sides are just as guilty.

9 At this stage of the game, whatever reasons you may  
10 have for not presenting the video through the witness who was  
11 just here, really are of no moment because you could have just  
12 put it on at the end of his testimony. We could have arranged  
13 that and then they could have opened up cross-examination  
14 based on just this. There is nobody then available to explain  
15 to me what that video is about.

16 MR. LIFSHITZ: Your Honor, there was testimony about  
17 that video in Guerra. There was no objection to that video  
18 and I don't believe there's any objection to it here. The  
19 video depicts three people and the witnesses at Guerra said  
20 they are --

21 THE COURT: So is the defense not objecting to that  
22 testimony even though the defendant was not present at the  
23 trial and did not have any opportunity to cross examine the  
24 witnesses?

25 MS. KEDIA: Your Honor, I apologize for this but the

RUSSO - REROSS - KEDIA

1 only way I can answer that question is to say I don't object  
2 to the government making submissions to the Court if both  
3 parties are given the opportunity to explain their various  
4 submissions. I understand the Court's position completely and  
5 certainly if the Court wants the witnesses to be called for  
6 each of these, we'll be prepared to cross examine each of the  
7 witnesses, otherwise we can do it as the government has  
8 suggested, that's entirely up to the Court. I...

9 (Continued on the next page.)

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## PROCEEDINGS

1                   THE COURT: So let's move on to the defendant's  
2 proposed testimony. What is the relevance of the testimony of  
3 these different people that are on the defendant's letter?

4                   MS. KEDIA: Your Honor, with respect to -- and I  
5 apologize, I don't even have the letter in front of me.

6                   THE COURT: Oh, geez Louise. The testimony of Dino  
7 Basciano, all of these were at the Guerra trial. Testimony of  
8 Dino Basciano, Joseph Iborti.

9                   Is it Matthew or Matthe?

10                  MS. KEDIA: Matthew, I believe, Tormey.

11                  THE COURT: Matthew with a "W" at the end. There's  
12 a typo. Tormey. And Michelle Fama.

13                  What is the relevance? What are they testifying  
14 about?

15                  MS. KEDIA: Your Honor, Dino Basciano testified at  
16 the Guerra trial that, as he understood it, Eric Curcio  
17 received a message from his uncle at the MCC within two weeks  
18 of the murder of Joseph Scopo that it was his uncle that, in  
19 fact, ordered the murder and it just began in the two weeks  
20 prior to the murder.

21                  He also testified that he had weapons, a significant  
22 number of weapons, that he sold including ones exactly like  
23 the MAC-10 and the silencer that were found at the scene.  
24 That's the primary significance.

25                  THE COURT: You're talking about a portion of the

## PROCEEDINGS

1 testimony?

2 MS. KEDIA: Yes. I'm talking about what we believe  
3 to be the relevant portion of the testimony. Dino Basciano  
4 didn't testify about Michael Persico in any way. I don't  
5 believe that Michael's name was mentioned during his  
6 examination. The relevance of his testimony is that if, in  
7 fact, he is to be believed and the order came from the uncle  
8 two weeks before --

9 THE COURT: So how am I supposed to test the  
10 credibility of these witnesses?

11 MS. KEDIA: Judge, if the Court would prefer that we  
12 call them, we can certainly call them.

13 THE COURT: Based on a cold record?

14 MS. KEDIA: I understand the Court's position,  
15 Judge. I understood that the government wanted to do this by  
16 submission, and I didn't understand that the Court had any  
17 objection to that prior to this.

18 THE COURT: Well, how could I say it when you submit  
19 this in the afternoon the day before the hearing?

20 MR. FERNICH: Your Honor, could I be heard for just  
21 a second?

22 THE COURT: No. You know what, this is triple  
23 teaming. I thought that Mr. Sercarz was going to take charge  
24 of this hearing, and I've heard from everybody but him except  
25 for one objection today. Get the story straight.

## PROCEEDINGS

1                   How am I supposed to judge the credibility of these  
2 witnesses, not to mention the relevance of all of this?

3                   Go ahead, Mr. Fernich, go ahead.

4                   MR. FERNICH: Judge, under Chapter 6 of the  
5 guidelines and voluminous case law from our circuit and the  
6 Supreme Court --

7                   THE COURT: Of which none was cited at all. At  
8 least the government made an attempt to make argument.

9                   MR. FERNICH: Well, your Honor, there's no limit on  
10 the source or type of the material that the Court can consider  
11 at sentencing.

12                  THE COURT: I agree.

13                  MR. FERNICH: Right. And with regard to the  
14 testimony that was cross-examined at the Guerra trial, your  
15 Honor can ascribe such weight as you think --

16                  THE COURT: I wasn't the judge who presided at the  
17 trial.

18                  MR. FERNICH: Yes, ma'am, I understand that. I'm  
19 not asking you to make a credibility determination with  
20 respect to the testimony that was given in Guerra's trial, but  
21 your Honor could consider that material in assessing the  
22 credibility of the witness who testified before you today and  
23 whether that --

24                  THE COURT: How? I haven't had an opportunity to  
25 see the witness testify.

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1                  MR. FERNICH:  Ma'am, you heard Russo testify  
2 today --

3                  THE COURT:  That's right, but I haven't heard any of  
4 these other people testify.

5                  MR. FERNICH:  Well, your Honor then could ascribe  
6 the Guerra testimony such weight, if any, as the Court feels  
7 it deserves with regard to making an assessment of the  
8 credibility of Russo, that's all, under Chapter 6.  It's your  
9 Honor's prerogative to give it, again, such weight as the  
10 Court feels it deserves, if any.  And if the Court is of the  
11 view that it's not worth anything in determining Russo's  
12 credibility, your Honor could also make that determination as  
13 well.

14                We're just proffering it, you know, for what it's  
15 worth in terms of this Fatico hearing.  It's not our burden to  
16 go forward anyway, but in the nature of extrinsic impeachment,  
17 let's say, your Honor could also consider that examination in  
18 addition to the cross-examination that was elicited today in  
19 the mix of factors relevant to Russo's credibility.

20                And if the Court deems it unworthy of any weight  
21 with regard to the witness's credibility, I understand that as  
22 well.

23                THE COURT:  And what is the testimony of Joseph  
24 Iborti?

25                MS. KEDIA:  Joseph Iborti similarly testified that

## PROCEEDINGS

1 he understood that the order came in the days before the Scopo  
2 murder to the extent that there was any kind of an order. And  
3 that Eric Curcio did this based on that, meaning, committed  
4 the Scopo homicide based on that. His testimony also  
5 conflicts with Russo in other ways.

6 As I understand it, your Honor, with respect to a  
7 credibility -- I understand that your Honor would like to see  
8 the witnesses. I will say this: These are government  
9 witnesses that they called at the Guerra trial.

10 THE COURT: I don't care who called them.

11 MS. KEDIA: I understand that.

12 THE COURT: It doesn't matter to me.

13 MS. KEDIA: They had cooperation agreements with the  
14 government that were --

15 THE COURT: But Mr. Persico wasn't the person on  
16 trial.

17 MS. KEDIA: I understand that.

18 MR. LIFSHITZ: Your Honor, may I be heard on those  
19 two witnesses, at least Basciano and Iborti?

20 THE COURT: Yes.

21 MR. LIFSHITZ: My understanding is the purpose  
22 defense has in putting in their testimony is largely the  
23 absence of reference to Michael Persico.

24 THE COURT: But that's my point. So there's no  
25 reference to Michael Persico. Michael Persico wasn't on trial

## PROCEEDINGS

1 so I don't see why the government would have the necessity to  
2 ask about Michael Persico necessarily.

3 MR. LIFSHITZ: That's correct. But those witnesses  
4 had information from a limited source which was largely Eric  
5 Curcio. So we don't dispute that they did not have knowledge  
6 about Michael Persico's role in the murder. And that's why we  
7 certainly do not object to their testimony being presented on  
8 paper because we're not going to elicit admissions from them  
9 about Michael Persico. They don't know him to be involved in  
10 the Scopo murder.

11 THE COURT: What about the testimony of Matthew  
12 Tormey? I mean, it would have been helpful if you could have  
13 in your submission instead of just listing all this different  
14 testimony said what it was, gave me some sort of a proffer as  
15 to what it was about instead of just giving me a laundry list.

16 MS. KEDIA: I understand, Judge. I apologize.

17 THE COURT: So I'm pulling teeth now. So what is  
18 Tormey's testimony?

19 MS. KEDIA: Your Honor, if I might just get my  
20 reference to Tormey's testimony.

21 (Brief pause.)

22 THE COURT: You should be prepared to address this  
23 like now.

24 MS. KEDIA: Your Honor, I understand. I was not  
25 intending to address this in this fashion. I believed that we

## PROCEEDINGS

1 would be calling an agent today and cross-examining --

2 THE COURT: I don't care. You have to have a basis  
3 and know what it is in that testimony that is relevant.

4 (Brief pause.)

5 THE COURT: Any day now.

6 MS. KEDIA: Yes, Judge. I apologize. Just a  
7 moment.

8 (Brief pause.)

9 MS. KEDIA: Mr. Tormey was the case agent between  
10 1995 and 1999 who was involved in investigating the murder of  
11 Joseph Scopo. He had information about -- from various  
12 sources about the murder. Those sources implicated John  
13 Pappa, Anthony Russo, Frank Guerra, John Sparacino and Eric  
14 Curcio, as I understand it, and did not implicate Michael  
15 Persico.

16 THE COURT: And Michelle Fama.

17 MS. KEDIA: Michelle Fama testified as an alibi  
18 witness at the Guerra trial.

19 THE COURT: Alibi for who?

20 MS. KEDIA: For Mr. Guerra. She said that he was  
21 not present on the night of the murder.

22 THE COURT: How is that relevant?

23 MS. KEDIA: Because it contradicts Mr. Russo's  
24 testimony, your Honor. I intended to submit to the Court a  
25 recording --

## PROCEEDINGS

1                   THE COURT: Was Mr. Guerra found guilty of the Scopo  
2 murder or not?

3                   MR. LIFSHITZ: He was not found not guilty at trial,  
4 and Judge Townes subsequently found at sentencing that he  
5 participated in it.

6                   THE COURT: I don't care about the Michelle Fama  
7 testimony.

8                   What is this government chart at a Pappa trial?  
9 About what?

10                  MS. KEDIA: Your Honor, this is the government's  
11 theory of the Pappa trial about how this murder took place  
12 based on the witnesses that were cooperating at the time and  
13 the investigation of the agents at the time.

14                  THE COURT: When did this trial occur?

15                  MS. KEDIA: In 1999, your Honor. And the government  
16 submitted that the order to kill Joseph Scopo was given in the  
17 two weeks prior to the Joseph Scopo murder by his uncle and  
18 other people not affiliated -- not Mr. Michael Persico, by an  
19 uncle and other people at the MCC. They also submitted that  
20 the car that Mr. Russo used in the murder was stolen the night  
21 before the murder.

22                  THE COURT: Which car are you talking about?

23                  MS. KEDIA: The car that was used on the night of  
24 the murder.

25                  THE COURT: The car that was used by whom?

## PROCEEDINGS

1 MS. KEDIA: By Mr. Russo, the stolen car, your  
2 Honor.

3 THE COURT: Well, that's prior to Mr. Russo even  
4 cooperating.

5 MS. KEDIA: Yes, it is, your Honor. But in any  
6 event, Mr. Russo has testified both at the Guerra trial --

7 THE COURT: Which occurred after 2011.

8 MS. KEDIA: Right. He testified at the Guerra  
9 trial that the car was stolen several weeks before the murder  
10 and was used in numerous surveillances and attempts to kill  
11 Mr. Scopo. That's contrary to the stipulation that the  
12 government entered into during the Pappa trial and contrary to  
13 other witnesses that were called at the Pappa trial.

14 THE COURT: And the government's Giglio letter from  
15 June 1, is it from this case?

16 MS. KEDIA: It is from this case, your Honor.

17 THE COURT: What's the docket entry number? Was it  
18 filed?

19 MS. KEDIA: I don't believe that it was filed.

20 THE COURT: And Giglio letter as to whom?

21 MS. KEDIA: Giglio letter as to many witnesses.  
22 But for the Court's consideration, my primary issue was to  
23 submit the Giglio material with respect to Anthony Russo. The  
24 government has numerous sources that has informed it, but  
25 Anthony Russo participated in multiple murders, not just the

## PROCEEDINGS

1 one that he claims now to have participated in. And also has  
2 advised that on multiple occasions he threatened his ex-wife,  
3 Michelle Fama, who testified as an alibi witness, threatened  
4 to kill her even on one occasion. And I was intending to  
5 submit along with that a recording to the Court --

6 THE COURT: That's not mentioned in your letter.

7 MS. KEDIA: No, your Honor. The letter was not -- I  
8 apologize. The letter was not intended to be a submission to  
9 the Court about what --

10 THE COURT: Then why file it on ECF? If it was not  
11 meant to be a submission to the Court and if it's not meant to  
12 require action by the Court, then you don't need to file it on  
13 ECF.

14 MS. KEDIA: That's fine, Judge. Some judges would  
15 like us to file all of our correspondence with each other on  
16 ECF. And that's been our practice when the case --

17 THE COURT: That's not my practice.

18 MS. KEDIA: I understand that, but I didn't know  
19 that prior.

20 THE COURT: Well, a simple inquiry would have  
21 sufficed, no, to find out?

22 MS. KEDIA: Yes, Judge. I was just responding to  
23 the government's letter that it had filed on ECF.

24 THE COURT: What is this discovery letter in the  
25 Russo case? I imagine that that also was not docketed.

## PROCEEDINGS

1 MS. KEDIA: I believe that that was docketed in  
2 Mr. Russo's case. I don't know that it was docketed in --

3 THE COURT: In this docket number? In this docket?

4 MS. KEDIA: No, your Honor.

5 THE COURT: A separate docket?

6 MR. LIFSHITZ: Russo's docket is 11-CR-30. It's  
7 Judge Matsumoto's case. And I do believe the letter was  
8 docketed in that case.

9 THE COURT: Okay. So it would have been nice to  
10 have the docket number and the docket entry number in the  
11 letter.

12 MS. KEDIA: I understand that, Judge. Again, I  
13 apologize. This letter was really for the government. It  
14 wasn't for the Court. I wasn't trying to explain to the Court  
15 the relevance of this --

16 THE COURT: Okay. Enough of your excuses.

17 How long is it going to take each of you to provide  
18 submissions and to provide what are going to be voluminous  
19 exhibits? Because, quite frankly, I think bringing the  
20 witnesses in would have been far faster than having to review  
21 all of this cold.

22 MR. LIFSHITZ: Your Honor, I discussed this with  
23 Ms. Kedia earlier in the day. We'll present our joint  
24 proposal.

25 We were proposing to submit complete post-hearing

## PROCEEDINGS

1 briefs arguing the credibility of Anthony Russo and submitting  
2 these exhibits that we would submit corroborate them, and they  
3 would submit contradiction, we would ask to do that in about  
4 four weeks and to respond --

5 THE COURT: No, no, that's ridiculous. You've had  
6 all of this stuff. You've had all of this for years, for  
7 years. I was expecting to have the hearing done by tomorrow  
8 so that we could move forward with sentencing on this case --  
9 a decision and sentencing on this case.

10 This is going to be rather voluminous so it's going  
11 to take you four weeks to put this together. I assume that  
12 you're going to want to respond to each other's arguments,  
13 correct?

14 MR. LIFSHITZ: Yes, your Honor. We can do it as  
15 quickly as the Court wants. Frankly, the part that will take  
16 longest is just getting the transcript of Russo's  
17 cross-examination and making our arguments about that. We can  
18 certainly make submissions about these exhibits very quickly,  
19 as quickly as the Court would like.

20 THE COURT: It will be a simultaneous briefing  
21 schedule. So both the government's and defendant's initial  
22 submissions by September 21.

23 How long for a response?

24 MR. LIFSHITZ: One week, your Honor.

25 THE COURT: Ms. Kedia?

## PROCEEDINGS

1 MS. KEDIA: I think that's fine, your Honor. One  
2 week would be fine.

3 THE COURT: Do not forget that I require two  
4 courtesy copies of all your submissions.

5 And on that note, I haven't gotten a single courtesy  
6 copy from the defense until my deputy has gone and chased  
7 after it. I did not get a courtesy copy of this filing on  
8 ECF.

9 I also have not gotten a courtesy copy of any  
10 objections or non-objections from defendant to the presentence  
11 report even though I specifically requested that. My deputy  
12 had to go and chase it down and ask for it to be brought in  
13 today, which apparently it was done.

14 MR. FERNICH: It's my fault, your Honor. I  
15 apologize. We do not have any further objections to --

16 THE COURT: I don't care. I made it very clear that  
17 if there were no objections to the presentence report, that a  
18 letter had to be written to probation and that I should get a  
19 copy of it.

20 MR. FERNICH: Yes. And I take responsibility.

21 THE COURT: And it was in the minute entry order.

22 MR. FERNICH: You are correct, and it's my fault.

23 MS. KEDIA: Your Honor, in addition to two hard  
24 courtesy copies, would your Honor like the exhibits on a disk  
25 as well or in any other format, electronic format?

## PROCEEDINGS

1 THE COURT: I want -- no. I want them in hard copy.

2 MS. KEDIA: That's fine, Judge. I just wanted to  
3 check.

4 THE COURT: I'll tell you what, give me one hard  
5 copy of the exhibits and one disk copy, okay. Law clerks like  
6 the disk. I like the hard copy.

7 MS. KEDIA: The exhibits are voluminous; that's why  
8 I asked.

9 THE COURT: If you could make it a searchable PDF,  
10 that would be a great help.

11 MS. KEDIA: Judge, I believe that we can make most  
12 of the documents a searchable PDF. There are, for example,  
13 certified copies of property documents that will not be  
14 searchable, but they are very short.

15 THE COURT: I'm more interested in the transcripts  
16 and the longer documents being in a searchable PDF.

17 MS. KEDIA: Certainly, Judge.

18 Judge, I do have one very brief witness that I could  
19 call as well.

20 THE COURT: Now?

21 MS. KEDIA: Yes.

22 THE COURT: Yeah. Go ahead.

23 MS. KEDIA: Your Honor, I neglected, I think, I'm  
24 not sure if I neglected to move into evidence Defense Exhibits  
25 A and B that I had marked.

## PROCEEDINGS

1 THE COURT: They were moved into evidence.

2 MS. KEDIA: Okay. Very good.

3 THE COURT: A, B, C, D and E and the transcripts  
4 are, of course, aids.

5 MS. KEDIA: Thank you.

6 (Witness enters the courtroom.)

7 THE COURTROOM DEPUTY: Please raise your right hand,  
8 sir.

9 (Witness takes the witness stand.)

10 RONALD J. DWYER, called as a witness, by the Defendant, having  
11 been first duly sworn/affirmed, was examined and testified as  
12 follows:

13 THE COURTROOM DEPUTY: Please be seated.

14 Please state and spell your name.

15 THE WITNESS: Ronald Dwyer, D-w-y-e-r.

16 THE COURT: I'm sorry. It's Ronald?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Dwyer, D-w-y-e-r?

19 THE WITNESS: That's correct.

20 THE COURT: Thank you. I'm just going to -- good  
21 afternoon, sir. I'm just going to ask you to speak slowly in  
22 a nice, loud, clear voice and you can adjust the microphone as  
23 you -- to make it comfortable for you. There's water there  
24 for you. Just be careful with the pitcher.

25 You may inquire when you're ready.

Russo - Direct - Kedia

1 DIRECT EXAMINATION

2 BY MS. KEDIA:

3 Q Good afternoon, Mr. Dwyer.

4 A Good afternoon.

5 Q Mr. Dwyer, how are you employed?

6 A I'm a private investigator.

7 Q And were you previously employed with the New York Police  
8 Department?

9 A Yes, I was.

10 Q For how long?

11 A Ten years.

12 Q And since then, have you been working as a private  
13 investigator?

14 A Yes. About the last 23 years.

15 Q I'm going to show you what has been marked collectively  
16 as Defendant's F.

17 Mr. Dwyer, do you recognize those photographs?

18 A Yes. These are printouts of photos I took last Friday.

19 Q And what address are those photographs of?

20 A 1378 East 72nd Street in Brooklyn.

21 THE COURT: Okay. I'm sorry, but you need to  
22 individually mark these as F-1, F-2, F-3 so we can keep track  
23 of what they are.

24 MS. KEDIA: I will.

25 THE COURT: You should have had these marked before

Russo - Direct - Kedia

1 coming here.

2 (Brief pause.)

3 Q Mr. Dwyer, this home at 1378 East 72nd Street, did you  
4 walk around it, drive around it? What did you do?

5 A I drive past it, parked my car and then walked around the  
6 front. Walked to both sides without necessarily going on the  
7 property but could view both sides.

8 And then I also walked around the back of the house.  
9 There's a street right behind the house that is adjacent to a  
10 six-foot cement wall that is there so I could see the back of  
11 the house as well.

12 Q And Mr. Dwyer, did you look around the house, the  
13 exterior of the house, closely when you visited it and took  
14 these photographs?

15 A Yes, I did.

16 Q Are there any exterior stairs going up to the home  
17 of -- going up to this home?

18 MR. LIFSHITZ: Objection to relevance, your Honor.

19 THE COURT: Yes. What is the relevance of all of  
20 this?

21 MS. KEDIA: Your Honor, this was Mr. Scopo's home  
22 in Brooklyn at the time that Mr. Russo testified that he  
23 attempted to kill him. He testified --

24 THE COURT: How would this witness know that?

25 MS. KEDIA: He doesn't know that, your Honor. He

## PROCEEDINGS

1 is simply saying that this was --

2 THE COURT: How do you know that?

3 MS. KEDIA: Because I have property deeds showing  
4 this was Mr. Scopo's home --

5 THE COURT: How do you know that's the condition of  
6 the home at the time?

7 MS. KEDIA: It was built in 1985, your Honor.

8 THE COURT: How do you know that was the condition  
9 of the home at the time?

10 MS. KEDIA: I have property deeds showing --

11 THE COURT: How do you know that that was the  
12 condition of the home at the time?

13 MS. KEDIA: Your Honor can take it for what it's  
14 worth. I don't know that this was the precise condition of  
15 the home. We can show that there are no exterior stairs. If  
16 your Honor looks at the photographs, I don't see how you could  
17 think that there would have been exterior stairs in the past.

18 THE COURT: You have no idea what the condition of  
19 the home was 20 years ago.

20 We're done. Thank you, sir. You can step down.

21 (Witness exits the courtroom.)

22 THE COURT: Anything else for today?

23 MR. LIFSHITZ: Not from the government.

24 MS. KEDIA: No, your Honor.

25 THE COURT: I'm going to put this on for sentence

## PROCEEDINGS

1 for November 2nd. The briefing on the Fatico issue will be  
2 complete by September 28th. Defendant's sentence memorandum  
3 will be due November 12th.

4 THE COURTROOM DEPUTY: Do you mean October 12th,  
5 Judge?

6 THE COURT: I'm sorry. I mean October 12th. And  
7 the government's sentencing memorandum will be due on November  
8 19th.

9 MR. SERCARZ: October 19th, your Honor?

10 THE COURT: October 19th. I'm sorry. I'm saying  
11 November. Thank you.

12 MR. FERNICH: Could I ask, your Honor, what time on  
13 November 2? I just have another appearance.

14 THE COURT: 2 o'clock. Is that good?

15 MR. FERNICH: Yes, Judge.

16 THE COURT: Do you want it a little later than that?

17 MR. FERNICH: 2:00 should work, your Honor. It's  
18 in this courthouse. I thank you.

19 THE COURT: Want to make it 2:30 to be on the safe  
20 side?

21 MR. FERNICH: Yes. That would be fine. Thank you  
22 very much.

23 THE COURT: Okay. Is that still good for the  
24 government?

25 MR. LIFSHITZ: Yes, your Honor.

## PROCEEDINGS

1                   THE COURT: Okay. I always have probation here so  
2 we'll double-check and make sure that that's a good time for  
3 probation as well. At 2:30 p.m.

4                   And any -- also if you could make sure to copy  
5 probation on your sentencing -- I'm sorry. Not only on your  
6 sentencing memorandum, but also on your Fatico submissions. I  
7 leave it up to probation if they want to have a disk for the  
8 exhibits. That's entirely up to them how they want to have  
9 the exhibits. And any addendum from probation by October 26.  
10 And that would include any addendum with respect to Fatico.

11                  All right. Anything else that the parties want to  
12 address today?

13                  MR. LIFSHITZ: Not from the government.

14                  THE COURT: Anything else?

15                  MS. KEDIA: No, your Honor.

16                  THE COURT: All right. Thank you.

17                  (Time noted: 4:50 p.m.)

18                  (Proceedings concluded.)

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